The Senate Committee on Natural Resources was called to order by Chair Yvanna D. Cancela at 1:40 p.m. on Tuesday, May 16, 2017, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Room 102 of the McMullen Hall, Great Basin College, 1500 College Parkway, Elko, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Yvanna D. Cancela, Chair
Senator Mark A. Manendo, Vice Chair
Senator Julia Ratti
Senator James A. Settelmeyer
Senator Pete Goicoechea

GUEST LEGISLATORS PRESENT:

Senator Tick Segerblom, Senatorial District No. 3
Assemblywoman Heidi Swank, Assembly District No. 16

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Erin Roohan, Counsel
Gayle Farley, Committee Secretary

OTHERS PRESENT:

Eric Balken, Executive Director, Glen Canyon Institute
Victor R. Baker, Regent’s Professor of Hydrology and Water Sources, Geosciences and Planetary Sciences, Department of Hydrology and Atmospheric Sciences, University of Arizona
Ellen Moore, Progressive Leadership Alliance of Nevada
Patrick Donnelly, Center for Biological Diversity
Kyle Davis, Nevada Conservation League
Howard Watts, Great Basin Water Network
Andy Belanger, Southern Nevada Water Authority; Las Vegas Valley Water District
Danny L. Thompson
Jason King, P.E., State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources
Lisa Foster, City of Boulder City
Kandis N. McClure, The Howard Hughes Corporation
Paul Moradkhan, Las Vegas Metro Chamber of Commerce
John Fudenberg, Clark County
Helen Foley, Pardee Homes of Nevada
Javier Trujillo, City of Henderson
Tyson K. Falk, Southern Nevada Home Builders Association
Warren B. Hardy, Virgin Valley Water District
Jayne Harkins, P.E., Executive Director, Colorado River Commission of Nevada
Amanda Moss, Retail Association of Nevada
Lucas Ingvoldstad, General Moly
Jon Leleu, NAIOP, Commercial Real Estate Development Association Northern Nevada Chapter
David Clyde, Regional Transportation Commission of Southern Nevada
Rusty McAllister, Nevada State AFL-CIO
Bob Fairman, Diamond Cattle Company
Therese A. Ure, Etcheverry Family Limited Partnership; Diamond Cattle Company
Daniel Rudnick, Etcheverry Family Limited Partnership; Diamond Cattle Company
John Hays, Nevada State Bank
Kurt Hardung, Etcheverry Family Limited Partnership; Diamond Cattle Company
Martin Etcheverry Jr., Etcheverry Family Limited Partnership; Diamond Cattle Company
Laurel Saito, Ph.D., P.E., Nevada Water Program Director, The Nature Conservancy
Jake Tibbitts, Natural Resources Manager, Eureka County
Marlene Brissenden, Commissioner, Board of Commissioners, Humboldt County
Gary Perea, Commissioner, Board of Commissioners, White Pine County
Pam Harrington, Trout Unlimited
Dave Stix, President, Nevada Cattlemen’s Association
Karen Boeger, Coalition for Nevada’s Wildlife, Inc.
Neal Desai, National Parks Conservation Association
CHAIR CANCELA:
We will begin the meeting with Senator Tick Segerblom introducing Assembly Joint Resolution (A.J.R. 4).

ASSEMBLY JOINT RESOLUTION 4: Requests the National Research Council of the National Academy of Sciences to conduct an independent scientific and economic analysis of the current management practices of the Colorado River, the impact of these practices on water security, flood protection and biodiversity recovery, and alternative management options, including draining Lake Powell and decommissioning and destroying the Glen Canyon Dam. (BDR R-101)

SENATOR TICK SEGERBLOM (Senatorial District No. 3):
My cosponsor on this bill is Assemblywoman Heidi Swank. This bill asks for a study; it does not ask for funds, it just asks for a study of the Colorado River Basin and the water resources based on two rationales. The first rationale is the fact with the given climate change that the amount of water in the Colorado Basin is neither as anticipated when the Colorado River Compact was established in the 1920s nor when the Hoover Dam and the Glen Canyon Dam were built and the current management system was enacted.

You are going to hear testimony from water authorities who claim that they are on top of everything and we do not have to worry about this. We are proposing that this Body requests a study even though there is no funding for studies.

The second rationale is more current and is based upon what happened in California with the Oroville Dam. As you are all aware, that Dam came very close to collapsing a couple of months ago based upon climate change. While
climate change over time appears to be less water, in any given year, it could be more water. Glen Canyon Dam, which is one of the dams in question, almost collapsed in 1983 because of the amount of water moving down. The Dam was built inadequately, and we believe it should not be used.

**ERIC BALKEN (Executive Director, Glen Canyon Institute):**
The Colorado River Basin is facing an environmental crisis and a water supply crisis. I have a letter of support for A.J.R. 4 (Exhibit C) as Executive Director of the Glen Canyon Institute. Numerous climate change studies continue to project that with rising temperatures in the Basin, reduced flows on the River will become more normal. It is becoming very clear that the Colorado River we know today is not the same river we knew 50 years ago.

The River also faces an environmental crisis with many adverse effects being a direct result of Glen Canyon Dam. This includes the inundation of Glen Canyon itself, a place that was once the biological heart of the river system and a proposed national park. Since its completion, we have seen the loss of 100 miles of wildlife habitat, 3 endemic fish species becoming endangered and a steady decline of the Grand Canyon from unnatural flows of cold sediment free water. In no uncertain terms, Glen Canyon Dam is one of the most environmentally destructive projects in our Nation’s history.

It is easy to say that even if Glen Canyon Dam was a mistake, it is there and we should make the most of its use. The primary purpose of the Dam is water storage. In a world of reduced river flows, the Dam may actually be undermining that very purpose because it loses a huge amount of water to evaporation and ground seepage.

A recent study from Jack Schmidt at Utah State University, who was the former chief of the U.S. Geological Survey’s Grand Canyon Monitoring and Research Center, showed that combining Lake Powell Reservoir and Lake Mead Reservoir would reduce overall surface area and likely reduce losses to seepage and evaporation. The study concluded that available data is quite sparse and more research needs to be done to fully flesh out the potential benefits of filling Lake Mead first.

In a recent article from the outlet *Water Deeply*, Dr. Schmidt said “I would say now is definitely not the time to implement [Fill Mead First] because the uncertainties are too large. But now is the time to get the right numbers so that
20 years from now we are not left with big uncertainties.” and “What is the effect of the Colorado River flow being near minimal power pool? Or near dead pool? Those things might happen intentionally or despite our worst fears.”

The idea now of lowering Lake Powell may seem ludicrous in a world where both reservoirs are full. Lake Powell could be completely drained into Lake Mead and Lake Mead still would not be full. We know today the previous assumptions of water supply that shaped the Colorado River management have been proven to be wrong. It is conceivable that Lake Powell may dip below power pool within a decade or less, and some variation of filling Lake Mead first would happen by default. A risk assessment study for the upper Basin was released this year from the Colorado River Water Conservation District that showed Lake Powell could go dry in as little as six years.

To address the water supply and environmental concerns, the federal government should proactively explore every option available. The U.S. Bureau of Reclamation has ignored the Fill Mead First proposal in every management process including the recent Glen Canyon Dam Long-Term Experimental and Management Plan EIS and the Colorado River Basin Water Supply and Demand Study of 2012.

For Nevada this is about risk reduction. If Lake Mead were to dip to 1,075 feet below sea level, Nevada would be constrained in the water it could withdraw from Lake Mead. This would have immediate impacts on Las Vegas and the southern Nevada economy. Southern Nevada has been one of the greatest leaders in the Country in heightened conservation; it can only go so far.

The 2007 shortage criteria that dictate the present balancing act of Lake Mead and Lake Powell are going to be finished in 2026 and the renegotiation of that shortage criteria is going to be happening in 3 years. It would benefit everyone in the Basin to have an independent study of all options available. It would benefit Nevada directly to ensure there are administrative ways to help Lake Mead stay above those reduction thresholds.

For 20 years, Glen Canyon Institute has commissioned a number of studies exploring these biological, economic legal and water supply issues of filling Lake Mead first, but it has limited resources. Because of the scale of this issue, a full effort of this proposal is something that can only be accomplished from the federal government. The Institute urges the Committee to approve this
legislation encouraging the National Research Council to conduct an analysis on current Colorado River management practices and alternative options like strategically lowering Lake Powell and filling Lake Mead first.

CHAIR CANCELA:
Could you tell us about the Glen Canyon Institute and the work you have done to inform us of these practices and this data? That would be very helpful.

MR. BALKEN:
The Glen Canyon Institute is a nonprofit organization whose mission is to restore a free-flowing Colorado River through Glen Canyon and Grand Canyon. We were established in 1996, and our work is done by facilitating scientific research that can move water policy forward toward the restoration of the Canyon. We are also a grassroots advocacy organization. I like to think of us as half promoting science and half grassroots advocacy.

VICTOR R. BAKER (Regent’s Professor of Hydrology and Water Sources, Geosciences and Planetary Sciences, Department of Hydrology and Atmospheric Sciences, University of Arizona):
I am a specialist on what nature tells us about extreme floods. I have been a scientist studying all aspects of flooding for 50 years. My interest in this is the only thing that I advocate, which is the best possible use of the scientific process in deriving information to lead to wise decisions. As a specialist in floods, my research team has been involved in studies in the Southwestern U.S. and, specifically, the Colorado River Basin for more than 30 years. A lot of the attention has been placed on the extremes of drought, but the record of Colorado River flooding is completely inadequate to understanding the nature of that hazard.

What does exist for the Colorado River Basin is an excellent record, understudied, of the extreme floods that have occurred in the past. My research and others have found that the floods that have occurred in the last 2,000 years are immensely bigger than anything that has happened within the gauge record on which the dams on the Colorado River were based in regard to that risk. The Hoover Dam recently celebrated its eightieth year, so these dams were built decades ago. While the engineers who make these designs use the best available information at the time, science is a process of making discovery about what nature really does. We have made recent discoveries that have not really been a part of the process for understanding the nature of the flood risk.
To give an example of how this might be a problem: if it is decided that the reservoirs are to operate in a way to maximize water supply for the future, it would mean that either or both reservoirs will be put in a full capacity. That implies that their vulnerability to extreme floods is immensely great. My point is that we have inadequate understanding at the present time of the disposition of that flood risk because of the nature of the stream-gauging record on the rivers. Therefore, it is appropriate that the top scientific body of the U.S., the National Academy of Sciences through its research arm the National Research Council, make an assessment of this from a purely scientific point of view. What I mean by that is that the appropriate role of science is to unconditionally search for the truth of what nature has to present to us. As I said, my career has been about what nature presents to us in regard to extreme floods. The only thing that is appropriate for me as a professional to advocate is that the best possible science be done in regard to this issue. I know that there are many other scientific issues as well, but I would leave the appropriateness of the discussions to my other scientific colleagues. From my point of view, it is absolutely essential to have the best possible scientific information given the extreme importance that the Colorado River Basin has to multiple states, including my own state of Arizona.

**Senator Segerblom:**
Dr. Baker, could you describe what happened in 1983 with the Glen Canyon Dam?

**Mr. Baker:**
This was an incident that occurred when the reservoir of Lake Powell was being filled. Anyone who has seen the Glen Canyon Dam knows that it is in the bottom of a canyon. The Dam has big cliffs of sandstone on either side. This means that you cannot build that Dam with the normal type of spillway. Spillways are usually built to the side of the dam and are able to carry the excess flow of water to prevent the flood water from going over the top of the dam, therefore destroying the Dam. The Glen Canyon Dam had to have an underground spillway built around the margin. In 1983, the flooding came in at the rate of 100,000 cubic feet per second, and the water had to go through this underground spillway. The spillway began to rip apart by a process called cavitation, and if the flood had not stopped naturally, the Glen Canyon Dam would have been lost.
My colleagues and I recognized that flooding had occurred 1,400 years ago at a level of 500,000 cubic feet per second in the area just downstream of the Glen Canyon Dam. That is five times as big as the event in 1983. This research tells us that this magnitude of flooding is possible. Nature has done it before and, with the possibility of climate change, this type of flooding can occur again. My point is that the National Academy of Sciences should look at this information carefully and evaluate it while considering the extreme importance that this conveys in regard to water resources in the entire Southwestern U.S.

**SENATOR SEGERBLOM:**

On Slides 7 and 8 of my presentation (Exhibit D) you can see that if Glen Canyon Dam collapsed after it was filled, there would be a 70-foot wall of water going over the Hoover Dam for approximately 11 days. This would devastate our water supply and infrastructure, and you can imagine the damage it would do downstream of Hoover Dam. This is something to be fearful of. We are asking for this study to analyze whether this could actually happen because there is not enough water for both Lake Mead and Lake Powell. If you hold the water up high, you risk having one of these types of floods and one of the dams collapsing, and if you do not have the water up high, there is no point in having Glen Canyon Dam.

Why should the Nevada Legislature do something? This resolution passed in the Assembly and if it passes in the Senate, it would be the first-elected request for an independent study to question the water bureaucrats, which is what I call them. Obviously, they are well-intentioned, but the U.S. Bureau of Reclamation and the Southern Nevada Water Authority have a built-in bias that they have lived off of for years. Why would they not want to have their opinions evaluated by an independent body? I am not sure, but you are going to hear about that. My point is, it is our job as Legislators to look at the day-to-day operations and to the next ten years for hazards like this and find solutions. This is why I think it is appropriate for our Legislative Body to be involved with this issue.

I am sure the people in California wished that their legislature had bothered to question how the Oroville Dam was doing before last year. It is going to cost them a half-billion dollars just to fix the dam’s spillway. It could have been a lot worse if that dam had collapsed.
ELLLEN MOORE (Progressive Leadership Alliance of Nevada): Nevadans deserve to make fully informed decisions on issues that affect our lives and State. We support A.J.R. 4. Giant dams were championed as a solution to the West’s greatest challenge to rampant development’s shortage of water. Today, climate change is making the West hotter and drier with less water to store. We are quickly evaporating the water that is stored. In fact, 160 billion gallons of surface water evaporates annually, with another 120 billion gallons leaking out from the bottom. That equals more than a year’s flow of the entire Colorado River. If that lost water was sold, it would generate $150 million per year. The time of big dams is over. In 2015, 6 Western dams were removed or deconstructed, and California and Oregon have agreed to dismantle 4 more.

PATRICK DONNELLY (Center for Biological Diversity): We support this bill. Evidence is making it clear that we can have Lake Powell or Lake Mead but not both. Lake Powell supplies power while Lake Mead supplies drinking water. We support a study that will reveal that draining Lake Powell would be the best way to proceed.

KYLE DAVIS (Nevada Conservation League): I am in support of the bill.

HOWARD WATTS (Great Basin Water Network): We are in support of this bill and feel this study is long overdue. As noted earlier, other places are deconstructing dams. There is a recent quote from a scientist who said, “one of the best things you can do for river health is to remove dams from a waterway.”

In terms of water storage, we can also look at what we consider smart storage in our arid region, which is recharging groundwater aquifers where we can. Therefore, we can still store water and be able to use it while actually repairing some of the aquifers that have been harmed from overpumping. I would recommend that the Committee look at the Water Deeply story that was referenced earlier by Eric Balken of the Glen Canyon Institute. This story lays out the need for this additional information and background for this proposal.
ANDY BELANGER (Southern Nevada Water Authority; Las Vegas Valley Water District):

We are in opposition of A.J.R. 4. We have a proposed amendment (Exhibit E), to help make the resolution meaningful with regard to the Colorado River. I want to correct a few things you heard today in the testimony. The Colorado River is facing an 18-year crippling drought. That drought has tested each community and each water user on the River. Southern Nevada has responded in a phenomenal way. We have reduced our water usage by 90,000 acre-feet from what we were using in 2002. That amount of water was reduced while we grew by approximately a half-million people. We believe there are ways we can address water supply issues. We support water conservation very strongly, but in a community that gets 90 percent of its water from the Colorado River, we are in a unique position. We practically rely on it for our entire supply. Yet, when you look at the flows on the Colorado River, we only get 2 percent of that water.

Although we need it for everything in southern Nevada, we have a very small voice. Our strength on the River has been our unity as a State. Nevada has spoken with one voice. Because we speak with one voice, we have been able to accomplish things. We have been able to stretch our supply, forestalling the day when we will have to use in-State resources. We have agreements with Arizona and California to bank water in these states. We have a system conservation program with the four major municipalities of the Colorado River that have worked together to keep the lake level higher. That cooperation is contingent upon us as Nevadans so as to not antagonize other states.

People may view this resolution as only being a study looking at science and whether this is a good idea or bad idea. However, if you are a water manager in Utah, Wyoming, Colorado or New Mexico and your ability to provide water to your communities is contingent upon the amount of water that is in Lake Powell, which is the safety net for the upper Basin, and Nevada issues a resolution that calls for the removal of the Glen Canyon Dam, that creates a concern. We are in the process of negotiating agreements on drought contingency. We are having conversations with Mexico, and this process has been in the works for two years or longer. If we start messing around with the Colorado River allocations, it could have humongous impacts on the River. That has a direct impact on southern Nevada’s water supply.
While we appreciate Senator Segerblom’s attempt to have a conversation, we can do that without passing this resolution. If the Legislature chooses to pass A.J.R. 4, we would ask that it be in support of our efforts to work cooperatively with the other states on drought contingency plans and Mexico’s Minute 32X agreement to deal with climate change. This is an issue that the River community needs to address. That process has started, but more can be done. Our proposed amendment would address those specific things that could benefit the Colorado River.

DANNY L. THOMPSON:
I am a member of Laborers International Union Local 872/AFL-CIO but speaking as a member of the Integrated Resource Planning Advisory Committee (IRPAC) for the Southern Nevada Water Authority (SNWA), as well as a member of the Governor’s Nevada Drought Forum.

I think it needs to be understood that in years of drought, Glen Canyon Dam guarantees water delivery to the lower Basin. It is also the upper Basin’s reservoir. Ninety percent of the water in southern Nevada comes from the Colorado River. Twice we have been in a place where we were almost unable to take water out of the River. In the beginning, we only had one straw in the River. If there would have been a lightning strike or some catastrophic failure, we would not have been able to take water out of the River. This is when we installed another straw into the system. As the drought continued, the upper line quit working because the water fell too low. We were approximately 30 feet from the second line failing to pull our allocation out of the Colorado River. The only way we survived in southern Nevada was through a return flow credit. Therefore, we get a gallon for every gallon that we take and put back. I do not know of any other city in the U.S. that recycles all of its water. That is how we survive today.

We recently constructed a tunnel that goes from Saddle Mountain under the Colorado River to the lowest point of the River and then bored up; now that tunnel is full of water. We are currently constructing pumping stations that will take the water and pump it into the system so that if the Colorado River does fall to a catastrophic level, we will still be able to get our allocation out. I have to tell you that without Glen Canyon Dam, we cannot regulate our water supply. If you want to force southern Nevada to have to look for water elsewhere, do away with the Glen Canyon Dam. More than 4,217 gigawatts of clean power, which does not have a carbon footprint, is produced by this Dam
every year. You would have to replace that as well. With all due respect to the proponents and sponsors of this bill, the Laborers Union Local 872 cannot support this Resolution.

JASON KING (State Engineer, Division of Water Resources, State Department of Conservation and Natural Resources):
Our opposition to this proposal stems from the fact that under A.J.R. 4, it is our agency that is directed to consult with comparable agencies in the signatory states of the Colorado River Compact, the U.S. Department of Interior and the National Research Council regarding options for funding the requested study. Our agency has no authority concerning the management of the Colorado River and would not be the appropriate agency to handle this task. The proper State agency is the Colorado River Commission of Nevada. The Colorado River Commission represents Nevada in regard to the Colorado River and on issues with other concerned states and countries.

LISA FOSTER (City of Boulder City):
We are opposed to this bill. The City understands the interests in studying the system and thinks that may be important, but it is opposed to the destruction of the Glen Canyon Dam. Boulder City is a user of the power produced by the Glen Canyon Dam and feels that decommissioning the Dam would have a negative impact on the community. Boulder City also believes it is important to keep this storage reservoir on the Colorado River.

KANDIS N. MCCLURE (The Howard Hughes Corporation):
We are in opposition to A.J.R. 4, and we echo the comments made by SNWA. We have concerns with the potential unintended consequences of this bill.

PAUL MORADKHAN (Las Vegas Metro Chamber of Commerce):
We oppose this bill. Our membership has concerns about the impact this would have on compacts and laws as drafted. Our water stability and supply is absolutely important to the business community and without water, we would not be in Las Vegas. We believe SNWA has been a great advocate in managing water and conservation efforts. The Las Vegas Metro Chamber of Commerce and its many members have been involved for many years with the IRPAC, and we are also engaged in water policy on the federal level. I would like to add that we are in support of the SNWA’s proposed amendment, Exhibit E.
JOHN FUDENBERG (Clark County):
I oppose this bill and echo the comments of Andy Belanger from SNWA. Although the proponents may consider this bill just “a study,” the language in A.J.R. 4 could be considered hostile by the upper Basin states and Mexico, which could significantly affect current negotiations.

HELEN FOLEY (Pardee Homes of Nevada):
We have many clients who are homebuilders, real estate developers and owners of major shopping centers in southern Nevada. I remember very clearly the Saturday night massacre in the early 1990s when all water rights were stopped in southern Nevada because we did not have enough water. Too much was allocated to people who had not been using it, and we were in a crisis. The SNWA was in its infancy and came forward. It took yeoman efforts to neutralize things and to work cooperatively with the sister states of the Colorado River and the law of the River. There have been states that sued if there was something they did not like. The SNWA decided they would work in very creative ways and crafted a treaty with Mexico to attempt to find the water we needed. For us to alienate this delicate balance on the Colorado River could be disastrous. We support the proposed amendment that SNWA has brought forward.

JAVIER TRUJILLO (City of Henderson):
The City of Henderson is supportive of the proposed amendment from SNWA, and I echo the comments of Mr. Belanger and Mr. Fudenberg.

TYSON K. FALK (Southern Nevada Home Builders Association):
We echo the comments of SNWA.

WARREN B. HARDY (Virgin Valley Water District):
I would like to restate the comments made by SNWA and support the proposed amendment.

JAYNE HARKINS, P.E. (Executive Director, Colorado River Commission of Nevada):
We are neutral on A.J.R. 4. I would like to provide the Committee with information for your consideration and have submitted my written testimony (Exhibit F).
SENATOR GOICOECHEA:
How many impoundments are there on the River from top to bottom? Do you know how many dams there are, starting with Flaming Gorge in Wyoming?

MS. HARKINS:
Starting at Glen Canyon, there are eight dams. Above Glen Canyon Dam, there are many others. The Colorado River Storage Project has numerous—I can get you that information. There are many in the upper Basin as well.

SENATOR GOICOECHEA:
If there is something that we need in our small streams in this State, even in the Humboldt, it is water storage. I do not like to see dams being taken out, they are very hard to put back in.

CHAIR CANCELA:
I want to make sure this is clear for the record. Senator Segerblom, would you consider the proposed amendment from SNWA a friendly amendment?

SENATOR SEGERBLOM:
I have worked with them and no, it is an unfriendly amendment. This issue is not going away. There is not enough water for both lakes and dams. One of them is going to have to go in my perspective, and that would be Glen Canyon Dam. We have a lot of years to work on this, so there is no rush.

CHAIR CANCELA:
We will close the hearing on A.J.R. 4. Due to today’s scheduling, we are moving Assembly Bill (A.B.) 138 to the Thursday Committee meeting. We will now open the work session on A.B. 209.

ASSEMBLY BILL 138 (1st Reprint): Authorizes the de minimus collection of precipitation under certain circumstances. (BDR 48-445)

ASSEMBLY BILL 209 (1st Reprint): Revises provisions governing the forfeiture of water rights. (BDR 48-308)

ALYSA KELLER (Policy Analyst):
I have submitted my work session document (Exhibit G) for the Committee.
SENATOR GOICOECHEA:
We need to reconcile this bill with Senate Bill (S.B.) 47.

SENATE BILL 47 (1st Reprint): Makes various changes relating to the appropriation of water. (BDR 48-499)

MR. KING:
There is very little overlapping language; however, I agree with you.

SENATOR MANENDO MOVED TO DO PASS A.B. 209.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CANCELA:
We will open the hearing on A.B. 298. We will be working from the proposed amendment mock-up, not the original bill.

ASSEMBLY BILL 298 (1st Reprint): Revises provisions relating to water. (BDR 48-735)

ASSEMBLYWOMAN HEIDI SWANK (Assembly District No.16):
This bill has been an endeavor and a massive collaboration that started in my Assembly Committee on Natural Resources even before it became part of the Governor’s Nevada Drought Forum. Many parties have had input on this bill and it has changed drastically. Many people have said that water, risks relating to water and monitoring, management and mitigation (3M) plans are what we are going to be arguing over in the coming centuries. I am here to talk about the process that began in my Committee. There were many conversations before we brought this bill to the Assembly. It was passed with the idea that those conversations would continue in the Senate. We are hoping we are getting close to something that everyone can agree on.

MR. BELANGER:
We have provided a proposed amendment (Exhibit H) which is the mock-up that Chair Cancela referenced at the opening of this hearing. The SNWA has taken a
leadership role with this bill and as a result, I think it has created a bit of misunderstanding. I would like to clarify a couple of things right away that are important to this bill.

The Governor’s Nevada Drought Forum was initiated in 2013 during the historic drought in Nevada. We discussed many things, and one of them was that the statute was not clear regarding the State Engineer’s authority to 3M plans, although the State Engineer believed he had that authority. The Drought Forum recommended that the State Engineer’s authority related to 3M plans be clarified. The Drought Forum also recommended that key terms in Nevada water law needed to be placed in statute. There have been references in court cases to the State Engineer’s unwritten rules. There needed to be some written rules related to these sorts of things. During the Drought Forum, as well as the Legislative Commission’s Subcommittee to Study Water that was chaired by Senator Goicoechea, we tried to get a framework surrounding the definitions and what should be in a 3M plan. We started in late December 2016 and invited people who were in support of 3M plans and those who were in opposition to them. We worked hard to get to the version of the bill that is in front of you.

I do not represent the people who support this. In fact, since the time this bill has moved from the Assembly to the Senate, people show less support for it now. I want to make this clear. We are ready to work with parties to come up with something reasonable as it relates to these issues.

I also want to make it clear that whether this bill passes, the State Engineer will retain the authority to define terms that are not defined in law. For instance, the term “perennial yield.” If the Legislature chooses not to adopt these definitions that we have worked through, the State Engineer retains that authority to include definitions of these things in his rulings and the ability to use 3M plans which are referenced in the current statute but are not clear.

What we are trying to accomplish in section 3, subsection 1 of the bill is to address the framework in which the State Engineer could execute a 3M plan. We want to acknowledge that he has the authority to consider, require, adopt or modify a 3M plan. Therefore, we took a part of S.B. 134 that requires the applicant, if the State Engineer believes that a 3M plan may be necessary, to work with existing water rights holders and domestic well owners to try to come to an agreement. The notion was that we should be encouraging people to work together and resolve issues outside of the State Engineer’s process.
SENATE BILL 134: Revises provisions concerning water. (BDR 48-787)

Section 3, subsection 2 clarifies principles required for a 3M plan, including the locations of existing water rights and domestic wells. It sets out language describing actions to avoid or eliminate conflicts and what shall constitute unreasonable effects, monitoring plans and provisions to comply with specific statutes of local governments and county participation. We wanted to retain the judicial review in section 4. Section 5 outlines the provisions and the requirements for forfeiture, cancellation and abandonment.

The remaining sections of the bill are conforming and transitory language. I do not believe there is any controversy until you get to sections 20 through 22. Section 20 addresses concerns about the State Engineer adopting rules with regard to 3M plans. Section 21 declares that the provisions of this act are intended to clarify the State Engineer’s authority, which was a recommendation of the Drought Forum.

Section 22 has to do with the application of the bill. That application proposes this bill to be retroactive and prospective. This does not retroactively bless the State Engineer’s decisions on permits but makes it clear that the rules apply to everyone and the definitions are universally applied to all parties. We want to get the policy right, and it is important for these rules to be applied to everybody and everything. We want this act to be very focused on statewide issues. As you can see, the definition of perennial yield is applied to everything. The 3M plans could be in an interbasin transfer situation or in a large complex project that is interbasin. We want it to be uniformly applied. We understand there is controversy. Anytime the SNWA opens its mouth, there are people who are going to be opposed to that. We want to work with the parties to come to some type of a solution. We hope that we can get there this Session. If we do not, be ready to have conversations in the future. We believe that the water law needs to be clarified in these areas. The fact that SNWA has been involved with this is a deterrent to some people; therefore, we are open to other ways.

MR. MORADKHAN:
Mr. Belanger asked me to give you the southern Nevada perspective on this bill. As many of you know, the Drought Forum started in 2013 as a bipartisan effort with each of the four caucuses chairing six committees that we had in southern Nevada. These are public hearings, and the Forum met during the 2015-2016 Interim. There were a variety of people from Legislators, local
government officials, stakeholders, community leaders and the public who participated in the process. It was a very transparent process, and the great thing about it was engagement from the entire community. When the parties emerged from the six committees, we had a meeting at the University of Nevada, Las Vegas, and approximately 300 to 400 Nevadans attended. I explained what a 3M plan was, and they ranked these priorities. This is why the Chamber of Commerce supports this bill.

SENATOR GOICOECHEA:
I appreciate what SNWA and a lot of other people have gone through trying to bring this bill to what I am seeing now. I will be honest with you, if we put S.B. 134 into A.B. 298, we still could not pass it today. This is toxic, and I think everyone understands that. There is such a division, and I am having trouble putting it together. I do not have to tell you where my constituency is with A.B. 298. There are some sticking spots, and we continue to have the one which is section 22. The lay interpretation and what it means is the biggest problem we have today.

SENATOR SETTELMEYER:
One of the questions I want to get on the record is about the definition of perennial yield in section 19. Am I correct in thinking that this would affect *Nevada Revised Statutes* (NRS) 533.353 and all cases coming from it?

MR. BELANGER:
Section 19 is conforming language that the Legislative Counsel Bureau Legal Division added. This has to do with NRS 534.110 because it references perennial yield. It has that language at the end of section 19, “As used in this section, ‘perennial yield’ has the meaning ascribed to it in section 2 of this act.” We believe this is just conforming language, it is not the language we had in our original draft.

SENATOR SETTELMEYER:
Changing the definition of perennial yield to the language that is in section 2, which pertains to NRS 533, means section 9 would also apply to that definition of perennial yield. Am I correct in saying that this would mean that all cases from 2012 forward would use that definition and we would be going back in time and applying that definition to existing cases?
MR. BELANGER: 
I am not a lawyer, but I will say that the intention of the retroactive language is to ensure the new definitions would apply to any action taken by the State Engineer as it moves forward. It does not look back and change things that the State Engineer has already done, but any action that has not been finalized would be subject to the language. One of the reasons why it is in there is because there are certain permits and applications, including the SNWA’s Groundwater Development Project, where we have gone to court and it has been remanded back. Do we have permits, do we have applications, what do we have? What we have is something, and we want to make sure what the law says is that it applies evenly to everything. From my perspective, there needs to be one set of rules. Otherwise, we needed to find out what perennial yield means before a certain date and what it means after that date. I do not know how to do that. If we get the policy and how it is applied right, everyone should be okay with it. That sticking point will need to be addressed. There ought to be one set of rules, but how do you get there? This is what we are struggling with.

SENATOR GOICOECHEA: 
The 3M plan is really what the problem is whether it is in S.B. 134 or A.B. 298. The fact is that you cannot deal with pre-statutory vested water rights in the same manner that you do with an application that occurred after 1913 or groundwater rights after 1939. This is the problem we are dealing with. You are saying one size fits all and it does not because we are dealing with layers of statutory water levels.

MR. THOMPSON: 
In the 1860s Mark Twain said that “Whiskey is for drinking; water is for fighting over.” It is truer today than it was then. It is important that we have one set of rules and a set of rules that everyone can understand. It is very complicated and difficult to write it all down but if possible, that would be in the best interest of all the fighting parties.

AMANDA MOSS (Retail Association of Nevada): 
We support this bill.

LUCAS INGVOLDSTAD (General Moly): 
We support A.B. 298. General Moly is a U.S.-based mineral development company that has two projects in Nevada. We testified in support of this bill in
the Assembly and have participated in the stakeholder meetings. We support the proposed amendment and believe this bill gives the State Engineer the ability to utilize, monitor and manage mitigation plans, also known as 3M plans, which have provided value in the past.

MR. FAULK:
We support this bill and the proposed amendment. From the homebuilders perspective, clarity in the planning process is important.

MR. TRUJILLO:
We support this bill.

JON LELEU (NAIOP, Commercial Real Estate Development Association, Northern Nevada Chapter):
We support A.B. 298.

MS. FOLEY:
We support A.B. 298. We think it is very important that actions of the State Engineer be codified in law so that everyone can look at it and know what they are facing. I understand the issue of perennial yield, and I hope that we can resolve this before Friday. It seems that the parties have come a long way with the amendments, and I hope we can get to the finish line.

DAVID CLYDE (Regional Transportation Commission of Southern Nevada):
We are the administrator of Southern Nevada Strong, which is the Southern Nevada Strong (SNS) Regional Plan. Part of the SNS Regional Plan includes supporting regulations that promote water planning and the efficient use of water. We are in support of A.B. 298 because it implements recommendations that came from the Drought Forum and addresses currently undefined water terms. This bill also clarifies the use of 3M plans, a term that is currently not well defined, to help us as a State better manage our water resources.

RUSTY McALLISTER (Nevada State AFL-CIO):
We support A.B. 298 and think it is a good idea to continue these discussions. My understanding is that there were a number of partners that participated in these discussions. Water is a long-standing issue in the State and from a labor perspective, we support this bill.
BOB FAIRMAN (Diamond Cattle Company):
We are opposed to A.B. 298.

THERESE A. URE (Etcheverry Family Limited Partnership; Diamond Cattle Company):
I am here to speak on behalf of the Etcheverry Family Limited Partnership and the Diamond Cattle Company. They have been personally fighting to protect their water rights since before 2008. They have been fighting the State Engineer’s Office, the district courts and the Nevada Supreme Court. They own Roberts Creek Ranch. I have submitted their written comments (Exhibit I) which include maps that outline where the well field is and where the drawdowns will take place, which basically encompasses their entire private property.

In these court proceedings, Well 206 was one of the wells in the well field that the project is proposing to take 11,400 acre-feet of water per year from. Well 206 was pumped for approximately one month and showed effects as far away as Nichols Spring, which is shown in the map at the higher elevation, page 7, Exhibit I. My clients have told me that this has not recovered to what it was before the test pumping. The proposed drawdown is vast. It will effect most of the valley as well as the Etcheverry’s grazing interests and their private property. Pages 6 and 7 of Exhibit I show their grazing allotment, which encompasses land owned by the Bureau of Land Management and private land. As you will see, the southern portion of their grazing permit will entirely be affected.

Before the proceedings with the State Engineer, referenced in the Nevada Supreme Court opinion on pages 8 through 13 of Exhibit I, the mine experts testified that there will be sources that will cease to exist; they will dry up.

The reason we are testifying is because it is this project that the State Engineer is proposing to use a 3M plan to get past these conflicts and the drying up of wells. We do not agree with that. The mine comes later in time to the Etcheverrys’ interest and the prior appropriation. We have all heard “first in time, first in right.” The Etcheverrys have certificated water rights dating back to 1913 for irrigation and vested stock water rights dating back to 1874. These effects are known, it is not just my opinion.
Chapter 533 of NRS says that if there are existing conflicts, the State Engineer shall deny new appropriations for these change applications. Our bottom line is that 3M plans are great in concept and they could work in certain situations, but in the Etcheverrys’ case, it has been shown that they do not work. In addition, the Etcheverrys would like the bill to absolutely require that the existing user be at the table and have to approve the 3M plan prior to it moving forward. Any reasonableness standard is a nonstarter for them because it is very subjective, and we do not know that what is reasonable to one is going to be reasonable to the other.

SENATOR GOICOECHEA: When we were first talking about 3M plans, we were talking about replacing water, but no one mentioned compensation, which is probably the key to all of this. The 3M plan is a tool in the toolbox to help the water right holder and the applicant to reach an agreement to avoid conflict or litigation.

However, no one has talked about compensation in any of the changes in this bill. The 800-pound gorilla in the room is compensation, and that has to come into some type of language when we are talking about a water bill. If you have a priority right, it is worth something. I do not know how we get there, but I do know that the State Engineer is struggling with the same thing. I understand his position, but if you have a stock water right on a hill that is watering 100 head of cows and you are denying access to 1,000 gallons per minute of water development, you have to be made whole. That is Nevada’s water law and everyone in this room wants to maintain that priority water law.

DANIEL RUDNICK (Etcheverry Family Limited Partnership; Diamond Cattle Company): We believe that there are some material vices in this bill with the issue being a taking without compensation. These water rights have been passed down for generations to the Etcheverry family who have ranched here for 70 years. They have fiercely defended these water rights in the courts. I have to say that our experience has been that with a big project versus a rancher, or a little person, you do not get big justice at the Office of the State Engineer. We have not experienced that. The only place we have been on a level playing field was when we got to the Nevada Supreme Court after hundreds of thousands of dollars in legal fees and a decade of litigation, and we are back there again. The idea that mitigation is a tool in the abstract is true. It is a tool that should be in the workbox of everybody who is dealing with water and natural resources. The
most valuable currency that a rancher in the State has is a vested pre-statutory water right. When you do not want to go through the front door and compensate someone for the taking and you are a public agency like SNWA or an arm of a public agency, then you do not want to use the tools that you have. If there is water that you need to have, then you should use the power of eminent domain. However, that is a big price tag for the State. That is why the public agencies do not want to use it. Then there are private parties, like General Moly, which wants to drill a concentrated well field right in front of the Roberts Creek Ranch headquarters and pump the equivalent of 7,000 gallons per minute for 44 years and dry up all the springs on the south side of Roberts Mountain. This is its water modeling which would destroy the ecology of that Ranch and all the sage grouse habitat. It is mind-boggling. General Moly, too, does not offer compensation. Everybody is using mitigation by coming through the back door with the State Engineer with a plan that is fatally flawed.

As Therese Ure stated, if we are not at the table negotiating and if you do not have our agreement, it is because the trade is no good. To give the State Engineer the cramdown authority, yes you can appeal that and spend ten years in the court system if you can, but these big companies will wear you down. Thank God they have not done that to us, and we are going to fiercely defend this. We oppose A.B. 298 in its present form. We would gladly participate on an ongoing basis with the stakeholders to try to find something that works and protects people’s rights.

JOHN HAYS (Nevada State Bank):
I oppose this bill. It would negatively impact the investments that banks have loaned money on in agriculture production. First, yields would be largely affected from the lack of water production, pounds of beef and of hay. Repayment capacity of a loan would be in question. Second, the value of the collateral for the loan would be significantly impacted, or we would be overloaned on the value of the property. What would happen is that all of my agricultural loans would be downgraded. When that happens, we have to put many loans in a loan loss reserve account. This would be a huge negative impact to the banking industry.

KURT HARDUNG (Etcheverry Family Limited Partnership; Diamond Cattle Company):
I am a certified real estate appraiser in Nevada. I have over 30 years of farm, ranch and rural appraisal experience. Based on my review of the proposed bill, in
regard to value, there is no upside. The priorities would become meaningless. I am hired to perform due diligence prior to the purchase of a ranch and on the priority. I would have to tell a buyer that the priorities are meaningless. With meaningless priority, it places uncertainty in the marketplace. It would most likely lengthen marketing time and with the uncertainty of the priority, there is the potential of a decrease in rural land values. I oppose this bill.

MARTIN ETCHEVERRY JR. (Etcheverry Family Limited Partnership; Diamond Cattle Company):
I am strongly against A.B. 298 for the simple fact that if you take away our water, you essentially take away our cattle ranch, which has been passed down for three generations. This bill would take away my dad and uncle’s livelihood and my future in this business.

MR. DAVIS:
I would like to mention that I was a participant in numerous discussions on this legislation. Unfortunately, the product you see in front of you has significant flaws. We are in opposition. We think that the bill as written has a few sections that undermine existing water law, especially as it relates to the doctrine of prior appropriation.

First, I would like to talk about the definitions in the bill. We generally agree with the comments submitted by the Nature Conservancy (Exhibit J) as it relates to the definitions. These are best dealt with in a rulemaking setting rather than being placed in statute. Specifically, we feel the definition of perennial yield is a worry and could lead to a situation of underground water mining. In section 3, subsection 3, paragraph (f), we do not think it is appropriate that mitigation measures be spelled out in statute. The bill should clarify that the State Engineer has the authority to adopt a 3M plan, and those measures not be placed in statute, especially as it relates to the concept of mitigation water. This is not a clarification of existing law, this is a new concept. I know that there are some cases where mitigation water has been used in the past, but as it relates to the ability to mitigate a situation where you have environmental degradation, we do not believe that you can use mitigation water to correct that. This is what is contemplated in this bill.

Section 22 could create situations opening up the State to due process concerns and potential litigation. This could apply new definitions and processes
to ensuing cases or those that have already been decided regarding existing water rights.

Ultimately, we feel that the bill is too broad and creates too many questions. We support the State Engineer having 3M plans as a tool to maximize beneficial use. We could support legislation that simply granted this authority and left the details to individual cases with appropriate safeguards for senior water rights and plant wildlife communities. In our view, this bill creates holes in State water law with potential impacts that could result in serious environmental degradation, which is why we are opposed today.

LAUREL SAITO PH.D, P.E. (Nevada Water Program Director, The Nature Conservancy):
The Nature Conservancy does not support this bill. I have submitted my written testimony (Exhibit K) as well as previously submitted detailed comments and recommendations for this bill.

JAKE TIBBITTS (Natural Resources Manager, Eureka County):
We fully support 3M plans highlighted in current statute from S.B. No. 133 of the 77th Session, that was supported by Senator Goicoechea. The only reference to monitoring, management and mitigation plans is in NRS 533.353. We have submitted a mock-up of a proposed amendment (Exhibit L). We have highlighted what we call the three best management practices for water appropriation. First, a project configures the points of diversion and diversion rates to eliminate a conflict. Second is to reduce the size of the project to improve water use efficiency to eliminate the conflict. Third, if those things cannot be done, to work cooperatively with the existing water rights holders to resolve conflicts by mutual agreement. This bill seems to bypass those three best management practices which we consider a fatal flaw of A.B. 298.

While the bill has improved in requiring applicants to work with conflicted senior water rights holders, we think it is too open-ended. As Mr. Rudnick talked about a cramdown upon senior water right holders, it puts us in somewhat of a David and Goliath syndrome for preexisting water right holders. We have major concerns with what is called “mitigation water” in the current bill. In the previous version it was called “replacement water.” The Nevada Supreme Court, when related to General Moly and Kobeh Valley Ranch, called it “substitute water” and gave a lot of warnings in that decision. I would like to
read directly from that decision. It says, “This is setting aside the further, specious assumption that water from a different source would be a sufficient replacement.” The definition of specious means “superficially plausible but actually wrong” and the second definition for specious is “misleading in appearance, especially misleadingly attractive.” Therefore, this may seem attractive to many individuals, but there are many issues today about replacement water, especially related to vested rights and legal implications, that the Legislature should think about. We also have concerns about some of the faulty reasoning that was put in section 21 and the arguable retroactivity of section 22. This has been addressed in our proposed amendment, Exhibit L. We are willing to work on this process to try to find something that is a consensus approach that everyone can live with.

MARLENE BRISSENDEN (Commissioner, Board of Commissioners, Humboldt County):
I would like to read from a commentary in the Elko Daily Free Press, May 2, titled, “The Wonderful World of Nevada Water: Watch Out for Wolves in Sheep Clothing” from one of my constituents by the name of Anthony Lesperance. He is a former director of the Department of Agriculture, and a professor of animal and range science at the University of Nevada, Reno, and a former Elko County Commissioner.

An amazing thing happened last month in Carson. The Nevada Senate Natural Resource Committee held a hearing where several presentations concerning Nevada’s water, or lack thereof, were presented. One presentation was made by Disque D. Deane Jr. and his partner, Sam Routson. Most rural Nevada folks know Sam, but few would actually know Mr. Deane, even if they had been involved in the many ongoing struggles to protect rural Nevada’s water for agriculture. But behind the scenes Mr. Deane knows quite a bit about Nevada’s water, at least how to get it transferred from rural counties to metropolitan areas like Vegas and Reno.

Deane was a former Senior Vice President of Vidler Water Company, a company that specialized in securing water for future growth of metropolitan areas. And, coincidentally Vidler and Deane had many activities on behalf of Vegas water needs in past years.
Deane’s thesis? Well it sounds pretty monumental. For openers he stated; “Nevada’s urban and rural communities must work together to build, operate and maintain a sustainable water supply which will eliminate drought’s unique ability to prevent Nevada from achieving its maximum economic potential.”

Well those are fancy words sure enough, but delving into Deane’s presentation sheds some light in what he might really have in mind. To quote his presentation “The solution that is needed includes several things. First build an aqueduct from the western terminus of the Humboldt River to the northern Truckee River near Wadsworth; and second, build a second aqueduct from the head waters of the Humboldt River to the northern edge of the Muddy River near Moapa.”

He goes on to suggest additional needs such as developing aquifer storage and recovery programs, as well as a bunch of gobble-gook about how a massive project like this might be funded.

A few obstacles come to mind, which could cause problems for Deane’s pipe dream. I am not sure quasi/municipal ...

CHAIR CANCELA:
I am going to ask that you speak to the bill. I think this is valuable information, and I believe it has been submitted to the Committee for the record. However, I need you to speak to the bill.

MS. BRISSENDEN:
As a Humboldt County Commissioner, I oppose A.B. 298 because I believe it would jeopardize the water of Humboldt County.

GARY PEREA (Commissioner, Board of Commissioners, White Pine County):
I am a White Pine County Commissioner and a resident of Baker. I would like to say that although the new language is pointing in the right direction, we are opposed to A.B. 298. The bill as it is right now weakens Nevada water law. It puts all existing water rights in jeopardy and places the existing water rights holders in a position where they have to prove harm or potential harm for new applications. I can see there may be a need to make some changes to Nevada water law, but this bill goes too far. It gives the State Engineer too
much power. It also gives too much power to the big municipalities and corporations that have the money to pay for the attorneys and hydrologists. It is unfair and unrealistic to imagine that farmers would have that capability to defend something that they have right now under current water law. White Pine County is opposed to A.B. 298.

PAM HARRINGTON (Trout Unlimited):
We oppose A.B. 298. One of the foundational reasons is the definition of perennial yield. That really changes Nevada’s water law significantly by opening it up to decreasing groundwater levels. Before, we had to maintain perennial yield; now with this new language, the word “unreasonable” has been inserted in several places. It talks about there being no unreasonable decrease in groundwater. That means there can be reasonable decrease in groundwater. This was not allowed before. Environmental soundness in this bill states no unreasonable impact to wildlife or plants or cannot cause inability to support wildlife or plants. I do not know who decides what is unreasonable. I guess it would be the State Engineer. What are unreasonable impacts to wildlife? There is much concern that so much ambiguity has been added now along with, as others have mentioned, the mitigation water part of it. I cannot see how a law can be approved that puts people on life support for their water. Right now that is part of our private property rights. This is kind of a taking if they can say, well now we are going to mitigate it, and we are going to give you replacement water. It is really scary to me.

I think it would be great if the Legislature could look at every way that water can be conserved in these places. They were having problems before this, and people are being put on life support for wildlife to have no more habitat. I think there is so much that can be done to conserve water. That would be worth our money and your time to pursue every way to conserve water before we take it from people’s water rights and ecosystems. We look forward to working with everyone concerning this issue. This is a huge and important issue to every Nevadan and anyone who cares about our wildlife and ecosystem.

MR. DONNELLY:
We oppose this bill. I have submitted my written testimony (Exhibit M).

DAVE STIX (President, Nevada Cattlemen’s Association):
The Nevada Cattlemen’s Association is 500 members strong with 300,000 head of cattle. We contribute to the $3 billion agricultural economy of
the State. I agree with everything that has been said. I have submitted our written testimony (Exhibit N).

KAREN BOEGER (Coalition for Nevada’s Wildlife, Inc.)
I would like to tell you who we represent: Rocky Mountain Elk Foundation, Nevada Waterfowl Association, Nevada Bighorns Unlimited, Nevada Trappers Association, Carson Valley Chukar Club, Truckee River Flyfishers, Nevada Outdoorsmen in Wheelchairs, Backcountry Hunters and Anglers and the Theodore Roosevelt Conservation Partnership.

Although a degree of progress has been made, we conclude from a wildlife perspective that our six primary concerns, which were previously sent to you in several letters, have not been allayed (Exhibit O). Having written to you regarding those concerns in detail, I will not take your time to reiterate them. However, I want to speak to you about wildlife. There does not seem to be any mention of science or the Department of Wildlife. The Department is not referred to as far as helping to develop a baseline, let alone monitoring. Also, the soil and vegetation scientific component seems to be missing in this bill as well. I would like to take a moment of recognition for Dean Baker, the tireless water warrior. He just died a few days ago, and I think it is ironic that I am here speaking to you today because it has been a privilege to join forces on issues of mutual concern with him dating back to almost four years ago.

We are opposed to this bill, which appears to us to add an element of uncertainty and undermine current water law protections for judicial water management that leads to stable health for habitat and ensures long term health of our wildlife. What is the demonstrable need to alter the existing water law protections? We ask you to retain the current protections for our precious water resources, the lifeblood for our wildlife and the habitat that sustains it.

NEAL DESAI (National Parks Conservation Association):
The National Parks Conservation Association (NPCA) was formed in 1919 by the first Director of the National Park Service to advocate on behalf of our national parks. We have 6,600 members in Nevada. We ask that you support our spectacular public lands, our precious groundwater that sustains wildlife, economies and our national parks. We also ask that you oppose groundwater mining and specifically A.B. 298 for the benefit of present and future generations.
We recognize and thank Chair Cancela for convening the stakeholder group to see if common ground could be reached. We greatly appreciate being part of a broad constituency that shared concerns of the numerous problematic provisions within this bill. The NPCA participated in this effort because we found that A.B. 298 in its former and present state authorizes groundwater mining. This could damage our national park resources, including Great Basin National Park.

This bill creates definitions for important scientifically grounded terms without the input and engagement of scientists. These definitions, for instance, “perennial yield for environmental soundness,” can create scenarios where groundwater mining occurs or said differently, “overdraft conditions.” If we want one set of rules for water policy as the proponents of this bill suggest, we have a venue which can actually contribute and benefit from the impetus of scientists and the State Engineer’s rulemaking process.

It is our hope and request that this Committee does not go down the road of affirmatively authorizing this proposed legislation for groundwater mining. Nevadans love their public lands and national parks. Sustaining these places and the environmental legacy requires responsible water policy—which A.B. 298 is not. If there are efforts or fixes that need to happen, let us see what we have in current law. We would be happy to engage in these discussions. We oppose A.B. 298.

STEVE BRADHURST (Executive Director, Central Nevada Regional Water Authority): I want to thank Madam Chair and Senator Goicoechea for your efforts to work on this bill and bring people together. There were well over 40 people in this room May 2 and May 9. We oppose A.B. 298. I have submitted my written testimony (Exhibit P).

MR. WATTS: We have worked diligently within the group of stakeholders. While some of our concerns have been addressed, we do not believe that A.B. 298 in its latest version has made enough progress. In some ways, it has moved backwards. I have submitted my written testimony (Exhibit Q).

REX STENINGER: I am an Elko native living in the Laimoille area. I am opposed to A.B. 298. I feel this is a bad bill and should be rejected in its entirety. I serve on the Elko County
Commission, the Humboldt River Basin Water Authority, and the Central Nevada Regional Water Authority. I have spent hours listening to people trying to fix the flaws in this bill, and all attempts have failed. The fact that this bill has been changed so often and so much is proof that it has huge problems. I suggest that you accept the invitation of the SNWA that suggested you defeat this bill and keep working on it for the next Session. As several others have testified, A.B. 298 has come a long way since its introduction, but many others have testified that it has a long way to go. We in Elko County have a relatively short and well-documented history and water has always been key. When Peter Skene Ogden came through in 1828, he found a barren wasteland. He and his crew of hearty trappers nearly starved to death and had to resort to eating their horses to get out of here. Today, the county that was originally too rough for the toughest mountain men of the era is home to 50,000 residents, hundreds of thousands of cows and sheep, and countless deer, elk, antelope, waterfowl and upland game. A similar story is shared by all the rural counties in Nevada. All that progress is due to the pioneers’ ability to harness the water that nature provides and a State water law that was designed to protect the fruits of their labors for those who would come later.

Nevada’s water laws are widely regarded as the best in the West largely because they protect the principle of first in time, first in right. It has served us well. Let us make sure that we do not jeopardize that.

CHRIS C. MAHANNAH (Churchill County):
We have submitted our written comments (Exhibit R). As most of you know, Churchill County and its residents own and hold significant decreed surface water rights on the Truckee River and the Carson River associated with the Newlands Project. They also hold significant permitted and certificated groundwater rights within Lahontan Valley. Churchill County has pending applications dating back to the mid-1980s to appropriate groundwater in Dixie Valley for a municipal export project. Therefore, the 3M plan components of this bill have some applicability to the County in that regard. I want to stress that the County is a firm believer of the doctrine of prior appropriation which is a cornerstone of Nevada water law. It has spent significant time and effort protecting senior downstream water rights, being on the bottom of this system. There is a concept in Nevada known as “highority” versus priority, and sometimes folks on the lower end get shorted. These are general comments from the County. The specific things I would like to address are the definitions and the workgroup that I participated in last week. Madam Chair asked for a
raise of hands asking how many people thought that the definitions should be removed from the bill. I believe the majority of the 30 or 40 people in the room supported that. The testimony today is the same. I am pleased to see that in this latest version, the definition of appropriated water has been removed.

We feel that the definition of perennial yield should be left to rulemaking. I would like to specifically address some of the terms in the proposed definition. Perennial yield means the maximum amount of groundwater in a source of supply that may be withdrawn each year over the long term without unreasonably or continuously decreasing that source of supply.

During the workgroup last week, I questioned what source of supply meant. Does it mean the recharge to the aquifer, or does it mean the aquifer itself? I believe a member of the State Engineer’s Office clarified that it meant the aquifer itself, but it is not defined in the statute. The two terms “unreasonably” and “continuously” will keep me employed as a consultant for many years by arguing what that means. I failed to mention in the beginning, Churchill County and the folks on the Humboldt River, Walker River, and Carson River have been concerned for many decades. Churchill County has been troubled for more than three decades on the conjunctive use or the interaction between groundwater and surface water. Let me give you an example of how this current definition fails to address conjunctive use.

If you place a well adjacent to a river and it is in hydraulic connection with the river, you can pump that well far in excess of the recharge of that basin, and that river can act as a constant head source. Take water from that river that downstream senior-decreed water rights owners own, and you will not see an unreasonable or continuous decrease in supply. In other words, water levels will not decline until that river dries up, as long as there is a hydrologic connection. For that reason alone, this definition fails. There are also concerns with interbasin flow in the definitions. We would recommend that all definitions be removed from the bill.

Churchill County is generally supportive of the 3M plan process. However, with the latest proposed amendments and removals in the latest version of the bill, the County cannot support it. In the interest of time, I will defer to the written comments submitted by Central Nevada Regional Water Authority, Exhibit P, Eureka County, Exhibit L, The Nature Conservancy, Exhibit J and Exhibit K, Great Basin Water Network, Exhibit Q, as well as the comments of
Mike Baughman from the Humboldt River Basin Water Authority. I think they have all adequately addressed the specific details and issues with the 3M plan.

This morning I reviewed the 13 exhibits submitted to this Committee regarding this bill. All of them, as well as the majority of people in this room, are opposed to this bill. There has been a lot of time and effort expended; however, this bill needs a lot of work before Churchill County could support it.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau Federation): We have submitted our written comments (Exhibit S). I am not going to read them to you, but I would like to highlight the fact that we wish to express our appreciation to be included in the working group. We have met with this group since its inception and have been a part of extensive discussions. Our experience in this process was positive. We feel that our requests for considerations were given fair treatment and a number of them are included in the comments before you.

Our top priority throughout the development of A.B. 298 was protection of the rights of existing water right owners. We also raised the issue of needing to have a defined process to respond to 3M plans that were not working. These requests were addressed in different concepts covered in the most recent version of the bill. The specific reason for our opposition is the language proposed to be added to NRS 533.370 in section 10, subsection 2, which has already been mentioned. Our concern with this language in this specific situation involves the fact that even if there is no unappropriated water in the proposed source of supply or where there is a proposed use or change that conflicts with existing rights, the concept is based on the language in this bill that a 3M plan can override that situation. We do not believe that you can override with the 3M plan that there is no unappropriated water. That is the basis for our argument.

WILLIE MOLINI (Coalition for Nevada’s Wildlife, Inc.; President, Nevada Waterfowl Association): I would like to say that because of the significant potential to deleterious impacts to fish and wildlife and their habitat, the organizations that I represent are opposed to this bill.
JEREMY DREW (Commissioner, Board of Wildlife Commissioners):
There are two aspects of A.B. 298 that the Wildlife Commission has developed its legislative platform around. One is in regard to the definition of environmental soundness. We believe there should be language specific to “no adverse impacts to threaten, or endanger species of conservation priority.” Specific to the development of 3M plans, we would like to see the Nevada Department of Wildlife involved in the process to speak directly to those aspects of environmental soundness of the given project. At this time, I do not believe that the latest version of the bill incorporates those two concepts in an adequate format.

JOHN HADDER (Great Basin Resource Watch):
We are opposed to this bill. Our position is similar to the Great Basin Water Network, Exhibit Q, and a number of other people who have spoken. The permitting process for the General Moly mine and Eureka County and the impacts to the ranching families there was mentioned. There are also public water reserves in that area currently in litigation. Not only private water rights but also public water rights that are in jeopardy with this bill.

MS. MOORE:
We are in opposition of this bill for the same reasons outlined by the many people testifying who would be most negatively and directly impacted.

TOBI TYLER:
I am opposed to this bill. As a wetland advocate and preservationist, I am extremely concerned about the long-term viability and health of the many wetlands, springs and marshes, such as the Ruby Marshes, which provide essential habitat for birds and other wildlife. I am also concerned about the use of the word “unreasonable,” particularly with regard to the definition of environmentally sound, which should be replaced with “no harmful impact on wildlife and plant communities.” I would like to suggest that southern Nevada stop building houses when there is obviously not enough water for the existing uses, given its seemingly endless attempt to grab northern Nevada’s water.

MIKE BAUGHMAN (Executive Director, Humboldt River Basin Water Authority):
We testified neutral on this bill in the Assembly and did not come to this process with any axes to grind against SNWA or the situation in Kobeh Valley. We viewed this bill as being applicable statewide. In the Humboldt Basin, we are looking at innumerable conflicts between groundwater and surface water. We
are working hard to understand. We will need tools to address those conflicts as we go forward to face some very large numbers of curtailments to get that River back in order.

I sat through all the testimony; I went to all the different meetings and participated. I thought that we would get to a bill that we could support or that we could just outright oppose. I guess at this point, this issue will be taken into the Interim. I have heard many people talk about continuing to work on this issue. I think it needs more work.

MR. KING:
We are testifying neutral on this bill. Although our office only uses 3M plans on a few occasions, we believe they have considerable value as a tool in the appropriation of our State’s water resources. There are certain projects where it is not possible to know how or where the hydraulic system will respond to groundwater pumping. Therefore, the water use must be monitored and adaptive management should be employed. The issue surrounding the use of 3M plans is a result of cases decided by our Office that have been before the Nevada Supreme Court several times. It will likely be back before the Court on these very issues this bill tried to address. Therefore, our Office wants to be careful about engaging in dialogue on this matter in order to ensure that we remain neutral in the performance of our work. There are a lot of things I would like to say that I cannot say due to the ongoing litigation. I will say one thing, I hear a lot of comments about the SNWA pipeline. I hear a lot of comments up here about General Moly, and I want people to take the 30,000-foot view of a bill. Our Office’s allegiance is to the water law. That is our constituency. It is not an applicant, it is not a protester, it is not about SNWA or General Moly, it is about water policy in the driest state in the Nation. People need to look at the actual language and how it could possibly impact their basin and their neighbor putting in a pivot, three pivots or grocery stores. I know 3M plans are not used very much, but there is other policy in this bill that people need to be aware of.

MR. BELANGER:
We appreciate all the comments that were made today, and it is safe to say we are not there yet. There are some things we may be able to do if you are interested in processing the bill; if not, we can work on it during the Interim. Based on the comments we heard, we may be able to pare the bill down. I do want to say that I made a commitment from the start of the process that this is not about SNWA’s Groundwater Development Project. That project is in our
resource plan, but our most recent resource plan pushes that out potentially 20 to 40 years. The specter of that project hangs over many things. The water law in this State needs to move forward, and we need to modernize some things. If we are going to hold off on making any changes for as long as that project is pending, we may be waiting multiple decades. I would be happy to work to address some of the concerns we heard today.

CHAIR CANCELA:
I echo Senator Goicoechea’s comments. As a result of the dialogue throughout this hearing, A.B. 298 may be too tainted for it to be the appropriate vessel. I believe the conversation should continue this Session and potentially beyond. I would be very interested in any changes you would have to bring forward.
CHAIR CANCELA:
There being no further business, we will close the hearing and adjourn at 4:04 p.m.

RESPECTFULLY SUBMITTED:

__________________________
Gayle Farley,
Committee Secretary

APPROVED BY:

__________________________
Senator Yvanna D. Cancela, Chair

DATE: ________________________________
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