

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

**Eighty-Second Session  
March 22, 2023**

The Committee on Natural Resources was called to order by Chair Lesley E. Cohen at 4:02 p.m. on Wednesday, March 22, 2023, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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 Natha C. Anderson, Vice 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:**

None

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Nicolas C. Anthony, Committee Policy Analyst  
Becky Peratt, Committee Policy Analyst  
Connie Barlow, Committee Manager

Minutes ID: 545



Nancy Davis, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Jennifer Carr, P.E., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources  
Jason B. Cooper, Administrative Services Officer, Division of Environmental Protection, State Department of Conservation and Natural Resources  
Steve Walker, representing Douglas County; and Eureka County  
Leo Drozdoff, representing Truckee Meadows Water Authority  
John Flansberg, Administrator, Regional Infrastructure, City of Reno  
Kathy Flanagan, Senior Public Affairs Analyst, Southern Nevada Water Authority  
Kandice Townsend, Government Affairs Specialist, City of North Las Vegas  
Nicole Rourke, Director, Government and Public Affairs, City of Henderson  
Jeffrey S. Rogan, representing Clark County  
Kyle Roerink, Executive Director, Great Basin Water Network  
Zach Bucher, Government Affairs Officer, Government and Community Affairs, City of Las Vegas  
Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources  
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation  
Davy Stix, Chair, Legislative Affairs Committee, Nevada Cattlemen's Association  
Shannon McDaniel, Private Citizen, Carson City, Nevada  
Annalise Porter, Associate Public Affairs Analyst, Public Services, Southern Nevada Water Authority  
Wade Poulsen, General Manager, Lincoln County Water District  
Casey Roberts, Private Citizen  
Patrick Donnelly, Nevada State Director, Center for Biological Diversity  
Will Adler, representing Pyramid Lake Paiute Tribe

**Chair Cohen:**

[Roll was called. Rules and protocol of the Committee were reviewed.] We will have two bill hearings today and public comment. Before we do that, we have a bill draft request (BDR) introduction.

**Bill Draft Request 48-338**—Revises provisions relating to water. (Later introduced as [Assembly Bill 387](#).)

I am looking for a motion to introduce BDR 48-338.

ASSEMBLYWOMAN ANDERSON MOVED FOR COMMITTEE INTRODUCTION OF BILL DRAFT REQUEST 48-338.

ASSEMBLYMAN DELONG SECONDED THE MOTION.

Are there any comments on the motion? Seeing none, we will vote.

THE MOTION PASSED. (ASSEMBLYWOMAN BROWN-MAY WAS ABSENT FOR THE VOTE.)

We will move on to our hearing on Assembly Bill 20.

**Assembly Bill 20: Revises provisions relating to water. (BDR 40-227)**

**Jennifer Carr, P.E., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:**

I appreciate the opportunity to present Assembly Bill 20. This bill is designed to continue to improve access to our water and wastewater infrastructure financing programs; align it with our federal program elements; and provide some needed housekeeping because there are certain areas of these statutes in the bill today that are as much as 35 years old.

For a little background in the water arena, the Division of Environmental Protection (NDEP) has state and federal water quality protection responsibilities across numerous program areas. The state of Nevada has our own laws and regulations in addition to the delegation of federal programs from the U.S. Environmental Protection Agency (EPA) under the Safe Drinking Water Act and the Clean Water Act. Our staff proudly seeks to achieve our mission to preserve and enhance the environment of the state in order to protect public health, sustain healthy ecosystems, and contribute to a vibrant economy.

Part of NDEP's responsibility in water includes three primary infrastructure financing programs created in the 1980s and 1990s. The first is known as the Capital Improvements Grant program which is from 1987; it is funded by state bond sales when they are authorized by the Legislature. The other water infrastructure financing programs at NDEP are the Clean Water State Revolving Fund, created in 1989; and the Drinking Water State Revolving Fund, created in 1997. The state revolving funds (SRFs) are capitalized by the U.S. EPA through grants. The programs have successfully distributed over \$1 billion in loans and principal forgiveness funding since inception more than 30 years ago. I will not be covering them today, but there are maps that were distributed that show the different distribution of funds both geographically and financially throughout the state [[Exhibit C](#), [Exhibit D](#), and [Exhibit E](#)]. Last year NDEP also began to receive funding for the first of five years through the federal bipartisan infrastructure law which will further capitalize our SRF in both clean water and drinking water.

Nevada's water needs are ever changing and require more innovative and robust approaches to managing our limited water resources. In both the Clean Water SRF and the Drinking Water SRF programs, changes have occurred at the federal level that now provide funding for innovative projects, but these new uses are beyond Nevada's current authority. Additionally, a more direct and efficient streamlined approach is needed to manage project funding to ensure we maintain federal grants while providing fiscal resources to needed infrastructure projects.

The Capital Improvement Grants Program and the Drinking Water SRF process projects through what is known as the Board for Financing Water Projects. The board is made up of five members appointed by the Governor: one to represent Clark County; one to represent Washoe County; and the other three to represent counties with populations less than 100,000. No more than two members may be from the same county. One member must be knowledgeable in the field of municipal finance, and the remaining members must be knowledgeable in the fields of planning and development of water resources. The Division of Environmental Protection is staff to that board, and we hold an ex officio nonvoting membership seat. That was a little bit of background.

Now I will walk you through A.B. 20 and draw your attention to specific sections or groups of sections that address common themes. Sections 4 through 14 expand eligible recipients and projects for the Clean Water State Revolving Fund. The Clean Water SRF was created at a time when rivers were on fire and water bodies across the nation were contaminated with wastewater from domestic sewage and industry. The focus at the time was creating funding for construction of wastewater treatment plants. Nevada's current statutes limit eligible recipients of these funds to municipalities for construction of publicly owned treatment works. "Municipalities" is further defined and limited to entities having jurisdiction over sewage, industrial wastes, or other wastes; or Indian tribes or authorized Indian tribal organization. That is the definition of municipalities having jurisdiction over sewage. It was great at the beginning, but now the Clean Water SRF can do so much more at the federal level, and NDEP needs to catch up.

The proposed change to the definition of "eligible recipient" in section 4 references the federal Clean Water Act so that as Congress continues to expand uses of these funds, Nevada can follow along more nimbly. Future project proponents that are not municipalities with jurisdiction over sewage would therefore be allowed to apply for infrastructure financing for new and more innovative types of projects provided by the Clean Water Act.

If you are curious, examples in Nevada could include:

- Allowing a drinking water system under the Clean Water Act to address protection of their surface water source by performing a nonpoint source or stormwater pollution control project.
- Allowing a drinking water system to perform septic-to-sewer conversion projects that will recapture wastewater for reuse as a source of supply.
- Assisting agricultural entities in addressing agricultural best management practices that will help reduce water-drawn groundwater hydrographic basins and surface water use.
- Assisting conservation districts to install erosion control measures, perform reforestation, or conduct proactive forest thinning to combat catastrophic wildfire in a watershed.

- Providing indirect funding to private homeowners through a financial institution pass-through that could help them to rehabilitate a failing septic system that could not be consolidated or to assist with the cost of consolidation when a septic-to-sewer conversion project is underway.

That is the gist of the content of the policy that we are looking to change with A.B. 20. I would note that section 11 of this bill is the section that triggers the two-thirds majority vote due to the expanded definition of "eligible recipient." Section 11, subsections 2 and 3, currently provide NDEP to impose and collect a fee from loan recipients. That fee is set by regulation adopted by the State Environmental Commission (SEC). This fee is used to administer the program, and back in 1990 the SEC set that fee to 0.5 percent of the loan amount. The bill language does not change that amount or create any new fee, but proposes to expand the types of eligible entities to apply for loans. The expansion of eligible recipients increases the potential for more loans to be dispersed which would potentially result in the generation of more fees. Therefore, the two-thirds majority vote requirement was assigned to the bill.

Moving to sections 15 through 19, these expand the use of set-aside activities in the Drinking Water State Revolving Fund. The Drinking Water SRF has several set-aside pots of funding that are defined percentages of the federal capitalization grants that can be used for specific purposes. Nevada places these funds in a separate account that has certain use limitations that are not restricted at the federal level.

At the federal level, the Drinking Water SRF program is allowed to provide loans and grants out of the set-aside funds that specifically fund projects for septic-to-sewer conversions, wellhead plugging and abandonment, and project planning for loan recipients. Project planning has been funded out of our loan program but at a smaller scale and it is also competing against actual construction project financing. Because of these limitations in Nevada's set-aside account, NDEP has not been able to move forward with projects in the Drinking Water Program to address source water protection through septic-to-sewer conversions and wellhead plugging and abandonment. Historically, funding in the set-aside account has been supporting water system technical assistance, water operator training, and program administration. Expansion of the uses of the set-asides as proposed in A.B. 20 will not impact existing uses.

Moving to sections 23 and 24, these will expand the use of the Capital Improvement Grants Program and address the constitution of the board. Current statutes have 11 eligible project types for this grant program from drinking water infrastructure to water conservation improvements to irrigation infrastructure.

Additions in A.B. 20 are to ensure Nevada is providing as many resources as possible to systems managing their limited water resources in a streamlined approach. Two specific conditions are proposed.

First, the current statutes allow the program to pay for costs associated with abandoning or decommissioning what is known as an individual sewage disposal system, or in layman's terms, a septic system. When that system is connected to a wastewater treatment plant, we can support those projects financially. However, current statutes allow for this only when NDEP requires the abandonment, connection, and consolidation into a wastewater treatment plant. The proposed language would expand this eligibility to allow the program to provide financial support if NDEP approves a program or a project for the protection of groundwater quality that is developed by a state or local government. This addition would permit local governments to make local decisions about protecting groundwater resources and create eligibility for helping to cover those costs even if the project is not required by NDEP.

Second, current statutes provide for payment of cost to connect a well to a municipal water system. Proposed language clarifies that the funding would also be provided for proper abandonment or plugging of a well when a property is connected to a water system. This supports groundwater quality protection through removal of the unused well.

There is one other item addressed in section 23. At the beginning, you may have been wondering why I described the makeup of the Board for Financing Water Projects. One aspect that I did not mention regarding the makeup pertains to political party affiliation of the board members. Section 23 of the bill proposes a change to the defined makeup of the board. Historically, there has been a requirement that not more than three voting members of the board may be of the same political party. We propose to remove this language. Approval of projects for funding is truly apolitical and we made this proposal to reflect the apolitical nature of this body. We feel that diverse representation across geographic regions is really more important than political affiliation. In recent years, the required split has affected at least one board member's personal decision on their political party affiliation. Other aspects of the makeup of the board remain unchanged.

Finally, A.B. 20 addresses a number of housekeeping issues. There are a number of other changes proposed throughout A.B. 20 that are intended to clean up outdated language in the operating statutes that do not reflect current practice or are needed for efficiency and streamlining.

I appreciate the opportunity to present A.B. 20 to you today. Jason Cooper, Infrastructure Financing Program Manager, is with me today in case you have any questions that are hard for me.

**Assemblywoman Bilbray-Axelrod:**

You initially started talking about septic systems, which we have had some robust conversations about recently. How much money do you think we are leaving on the table annually without having this? Also, do the grants have to be requested by NDEP or, for example, can Southern Nevada Water Authority (SNWA) apply for grants? Would they apply for a subgrant from you? I am just trying to understand the breakdown.

**Jennifer Carr:**

Could I ask a clarifying question? When you ask about the grants and making sure they are not leaving money on the table, are you talking about our capitalization grants where we bring money in? When you are asking about grants for SNWA, are you talking about grants where we would be putting money out?

**Assemblywoman Bilbray-Axelrod:**

I should have clarified that; I meant two separate pots. You are making these changes to the *Nevada Revised Statutes* because we are clearly leaving money on the table with the feds, and this will open us up to receiving more money. Is that correct?

**Jennifer Carr:**

We are not currently leaving any money on the table, but what we are trying to do with the money that we have is use it to the fullest extent that the federal law provides. Right now, we are simply limited in the types of projects people want to do that are federally eligible, but are not eligible because of state law.

**Assemblywoman Bilbray-Axelrod:**

Thank you for that clarification. You are already getting the money, and an entity or municipality would then come to you for a subgrant—or are you giving a loan? Some of these are loans and some are grants, and I am just trying to wrap my head around it.

**Jennifer Carr:**

Because there are three programs here, it certainly can be confusing and it is to our borrowers sometimes as well, so you are not alone. The SRFs are generally loan programs, but the federal requirements do have certain percentages that we have to meet those program requirements, such as principal forgiveness loans that we issue to disadvantaged or underserved communities. A principal forgiveness loan is simply a loan that you do not have to pay back. It acts like a grant, but technically it is a loan. The Capital Improvement Grants Program is where we were talking about the ability to do septic-to-sewer conversions that a municipality would want to pursue; those are grants that we utilize our state bonds for.

**Assemblywoman Anderson:**

My question has to do with section 11 of the bill. You made it very clear as to the expansion of the loans is why that two-thirds vote will be necessary. With the expansion of so many more people applying, how many more do you anticipate that to be, or are you planning on or hoping for?

**Jason B. Cooper, Administrative Services Officer, Division of Environmental Protection, State Department of Conservation and Natural Resources:**

I oversee the SRF programs and the Capital Improvement Grant Program in NDEP. The number of borrowers that we can expect from this expansion is unknown at this time. Our intent, of course, is to simply make sure we are utilizing the funds to the fullest extent possible. The amount of money the program collects in the service fee is closely monitored and balanced in the budget when we submit those pieces.

**Assemblywoman Anderson:**

Regarding that "closely monitoring," is that ever turned over to the Interim Finance Committee or to this body so that we are aware of how much money is being utilized? Or is that something that is simply kept within the Division?

**Jason Cooper:**

We actually include that with our budget submission to the Governor, which then gets transmitted to the Legislature.

**Assemblywoman La Rue Hatch:**

I have a two-part question, and my second question depends on the answer to the first. The first part is, on the board, how long do the members serve? What is the process for removing a member?

**Jason Cooper:**

The normal term is four years and they are appointed at the pleasure of the Governor. We can receive a reappointment at any time. We can also receive an extension as well.

**Assemblywoman La Rue Hatch:**

That brings me to my follow-up question, which is, with removing the political party requirement, are you concerned that a new governor from a different party may rescind everybody on the board and replace them with his party; and then the next governor may rescind everybody and replace them with his party, because there are no guardrails on the political party?

**Jennifer Carr:**

That is an angle that we had not considered. We have never experienced that in the history of the board, but I suppose it could be possible.

**Assemblyman Watts:**

I appreciate that question; I will say that I think I understand where some of the intent is coming from around that. I know that within this body, water expertise is not really limited by partisanship. We do have certain bodies that are limited by partisanship, but we have many that are not so that we can make sure we get the folks with the relevant expertise involved in making those decisions. While there is some substantial responsibility related to allocation of those funds, I think that sometimes we can run into issues when we put too many requirements on things, getting the suite of experience that we need to make those decisions.

You talked about some of the new innovative opportunities. I know that probably over the last 15 years or so, there has been a continued expansion of potential applications for SRF. That also depends on eligible entities bringing forward those projects for consideration into the portfolio. I know it is tough because you do provide some technical assistance, but ultimately you are just taking in and reviewing what you get. Can you share anything about supporting some of the smaller entities in evaluating, for example, some of the watershed



rehabilitation, mitigating pollution, or some of these other things? Could you just speak a little bit about the challenges and opportunities to get folks away from the traditional drinking water or wastewater systems to look at some of these more innovative opportunities that might be out there?

**Jennifer Carr:**

Mr. Cooper's team does a fantastic job conducting outreach for the program. As these eligible entities and project types change, they are out there constantly beating the bushes, doing virtual workshops, real workshops, meeting with communities, working with the Nevada Rural Water Association, which is a real small system affiliation. There is also additional work that is being done in the area of small and disadvantaged communities or underserved communities. As a result of the bipartisan infrastructure law, our geographic information systems (GIS) staff have been looking at other metrics that can be used that Mr. Cooper's team has been working on that do not solely look at median household income, but look at other metrics like food stamp data or unemployment data to try to layer those in a GIS so we can ensure we are turning over all the stones to look for potential projects. The types of projects like you are talking about, Assemblyman Watts, go hand in hand with that outreach because they are trying to get as many ideas and applicants in as they can. They are constantly seeding ideas saying, You can do this, and you can do that, and look at all these great new things you can do. I think the outreach they do is pretty effective.

**Assemblyman Watts:**

I have had the pleasure of receiving some updates and presentations from Mr. Cooper. We have a lot of tremendous state employees, but the enthusiasm he brings toward the programs under his purview definitely shines through. I am sure we are doing the best job we can to get the word out there.

**Chair Cohen:**

I am wondering about that definition of "eligible recipient." Will you tell us who that is, and whom that is intending to capture? Could that be a private entity or is that just going to be municipalities?

**Jennifer Carr:**

The Clean Water Act does not have a specific definition for "eligible entity." That is one of the reasons why this proposal in A.B. 20 directs the SEC to enact a regulation that defines it. That definition can change over time as eligible entities at the federal level continue to grow and expand. By not having a federal definition, the EPA is allowing states to be able to determine who is eligible. I think that is a very effective way to allow us to be nimble where we can react through regulation when the federal program changes. The examples of proposed eligible recipients—we anticipate will be part of the program would be counties, cities, towns, tribal governments—which are already part of the law—nonprofit organizations, water conservation districts—both public and private—irrigation districts, homeowners' associations—both public and private—and educational institutions and

districts publicly and privately owned. We are looking at expanding the definition to include the variety of recipients that the federal regulations in the U.S. Code of Federal Regulations Title 40 provide.

**Chair Cohen:**

Seeing no other questions, we will move on to support.

**Steve Walker, representing Douglas County:**

The Douglas County Board of County Commissioners voted unanimously to endorse A.B. 20. I also have some personal ties to this bill. I have worked on attempts to convert septic systems that were polluting groundwater with nitrates in Washoe, Douglas, and Lyon Counties. I have not been successful because there was no funding and conversions would cost homeowners \$30,000 to \$40,000. This bill on the septic tank conversion is very important to protecting groundwater in Nevada. Additionally, I served on the Board for Financing Water Projects for ten years. When I changed my political affiliation to nonpartisan, I lost my job. It had nothing to do with the fact that I had 40 years' experience working all over the state on water issues. I think taking that out is very important. Thank you.

**Leo Drozdoff, representing Truckee Meadows Water Authority:**

The Truckee Meadows Water Authority is in enthusiastic support of A.B. 20, specifically the sections 4 through 14 that Administrator Carr spoke to. We would be an example of an entity that is now eligible to compete for these projects. We think it is very important that we are allowed to do so.

**John Flansberg, Administrator, Regional Infrastructure, City of Reno:**

I have served on the Northern Nevada Water Planning Commission for over 13 years as a technical adviser to the Western Regional Water Commission. We are also in support of this bill. I have been asked by the Reno City Council to develop options for them for septic-to-sewer conversions. We have a few areas in the city of Reno that are still on septic. This bill would give us greater flexibility in how we might be able to administer those programs. For that reason, I am in favor and urge your support. [A letter of support was also provided, [Exhibit F](#)].

**Kathy Flanagan, Senior Public Affairs Analyst, Southern Nevada Water Authority:**

Aligning Nevada's drinking water and wastewater programs with the federal programs gives the Division of Environmental Protection the flexibility to fund a variety of projects to address Nevada's highest priority needs. By approving this measure, more participants will be able to access funding if they choose to do so. I emphasize the "if" because that is where the two-thirds requirement comes in on this bill, from the imposition of the administrative fee. I want to remind everyone that no one is forced to take out an SRF loan. However, if they choose to do so, then they should be required to share in the administrative costs, the review, the approval, and the administration of the contracts. An entity that uses SRF funding will benefit far more by the financial assistance compared to the nominal fee they would be charged. I urge your support of this measure.

**Kandice Townsend, Government Affairs Specialist, City of North Las Vegas:**

I am testifying in support of A.B. 20. We believe that by expanding the definition, it will increase participation in the Clean Water State Revolving Fund which has provided funding for a wide range of water quality infrastructure projects in our state. We look forward to the continued success of the program and will continue our efforts to provide clean water to the residents of North Las Vegas.

**Nicole Rourke, Director, Government and Public Affairs, City of Henderson:**

We are here to echo the comments of support for A.B. 20. We are particularly happy to see the funding go to the septic system conversion. We think this is an important measure along with other bills before this body that will work on that issue. We are here to thank you; there are very limited resources for that particular issue. We think this is a step in the right direction.

**Jeffrey S. Rogan, representing Clark County:**

There is nothing more that I can add to what our local government partners have already said. We, too, are very excited for the opportunity for residents of southern Nevada to use funds like this in order to convert their septic systems to municipal sewer. It is very expensive for them to do so, and having any additional funding would be helpful in that regard. We are very supportive of this bill, and we urge you to support it as well.

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

I want to echo the comments of others and I think it is a good bill. Thank you.

**Zach Bucher, Government Affairs Officer, Government and Community Affairs, City of Las Vegas:**

Madam Chair, if you will permit me, I would like to compliment your Committee. Today is Bolo Tie Wednesday at the Legislature. This Committee is absolutely strong in the bolo tie game. It is amazing. It is bipartisan, men and women, it is a beautiful thing. Good job. I will just say I have a "me too" comment here in support of this bill.

**Chair Cohen:**

Seeing no one else in Carson City, Las Vegas, or Elko, is there anyone on the phone? Hearing no one, I will go to opposition. Is there anyone in Carson City, Las Vegas, or Elko wishing to testify in opposition? Seeing no one, is there anyone on the phone? Hearing no one, is there anyone in neutral in Carson City, Las Vegas, or Elko? Seeing no one, is there anyone on the phone? Hearing no one, and the Administrator is waving us off for closing comments, I will close the hearing on Assembly Bill 20. I will open the hearing on Assembly Bill 91.

**[Assembly Bill 91](#): Revises provisions governing water. (BDR 48-696)**

**Assemblyman Rich DeLong, Assembly District No. 26:**

I am here today to introduce Assembly Bill 91, a bill seeking to provide the same regulatory relief to water right holders with wells on public land as those with wells on private land.

Currently, a water right holder with a well on private land can drill a replacement well without having to go through the burdensome application process with the State Engineer when their existing well fails. The goal here is to afford water right holders with wells on public lands the same regulatory relief. Thank you again for the privilege of presenting this today, and I will now walk through the particulars of the legislative language. Section 1 inserts the words "public lands or on" in subsection 1(a), and subsection 2. Section 2 has the act becoming effective on July 1, 2023. With that, I would like to answer any questions.

**Assemblywoman Hansen:**

Let us just cut to the chase. Can you give us some examples of where this would apply? Are there some real-life scenarios where maybe this has been a problem in the past?

**Assemblyman DeLong:**

A good example would be ranchers in rural Nevada who have grazing allotments on public lands. They commonly have stock watering wells to provide water within their allotments for their cattle or their sheep. If those wells collapse because of either corrosion of the casing or some other reason, they have to apply to the Office of the State Engineer and go through the application process to get authorization to put the replacement well in.

**Assemblywoman Hansen:**

How long does that process usually take?

**Assemblyman DeLong:**

There is no defined term in state law or regulation; it can be months. Cattle need water quite quickly, particularly if it is in the middle of the summer.

**Assemblywoman Bilbray-Axelrod:**

We are talking about grazing, so is that primarily on federal lands in Nevada such as the Bureau of Land Management (BLM)?

**Assemblyman DeLong:**

There is grazing on public land. Some grazing does occur on private land.

**Assemblywoman Bilbray-Axelrod:**

Specifically for this bill, we are talking about grazing on BLM land—when a rancher has gone into an agreement with BLM to have grazing, and there is an active contract with them. Is that correct?

**Assemblyman DeLong:**

That is correct.

**Assemblywoman Bilbray-Axelrod:**

Who owns the well?

**Assemblyman DeLong:**

The water right holder, which would be the rancher or any other entity that has permission from the State Engineer's Office to drill a well.

**Assemblywoman Bilbray-Axelrod:**

The land is BLM land, yet the water right could be with the rancher who has the grazing rights on the land?

**Assemblyman DeLong:**

Correct.

**Assemblywoman Bilbray-Axelrod:**

How long do wells usually last?

**Assemblyman DeLong:**

I do not have a precise answer to that, although I could talk to some of the drilling companies I know and get you that answer. I know it can be a matter of years to decades, depending on water conditions and ground conditions.

**Assemblywoman Bilbray-Axelrod:**

The thought behind this bill is you have constituents who are coming to you and saying, My well has failed; I have gone to the State Engineer; and our cattle are dying of thirst because the State Engineer is taking too long to get these approved. It just seems like a bit of an overreach for me. If there is a problem where it is taking that long for the State Engineer, when you have the grazing rights available, I think that is a problem with the State Engineer's Office and that needs to be addressed. I do not know if changing the *Nevada Revised Statutes* (NRS) is right. I am just trying to wrap my head around this because I feel like this is a bit of a slippery slope when we are talking about our public lands.

**Assemblyman DeLong:**

This bill is just trying to give equity between water right holders who have wells on public land versus private land. This bill is not trying to address any federal issues which I think are beyond the scope of the *Nevada Revised Statutes*.

**Assemblywoman La Rue Hatch:**

I think there is a difference between private and public. I understand you can do what you want on your private land. I do agree that some oversight on our public lands is necessary. I have a follow-up question to my colleague. You mentioned ranchers. Who else would this apply to other than ranchers?

**Assemblyman DeLong:**

I think there are a couple of other users of water in rural Nevada whom this could be applicable to. One might be farmers who have pivot irrigation; they may have their wells on public land adjacent to their private pivots. The other would be the mining industry, which commonly has wells on public land.

**Assemblywoman La Rue Hatch:**

I am wondering about how long it takes to approve these permits to get another well drilled.

**Assemblyman DeLong:**

I think it would be best if the Division of Water Resources (NDWR) answers their processing time frames.

**Micheline Fairbank, Deputy Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:**

Our process, when it comes to reviewing what we call a notice of intent to drill, which is generally what is filed in our office for a replacement well, is that presently the statute and our regulations allow a new well to be drilled without having to apply for an application to change the point of diversion if that new well is drilled within 300 feet of the existing well. The statute on its face does not include the public lands aspect, which is what this legislation is seeking to do. The time period for us is we generally try to turn those around within three days. Sometimes there are circumstances that may cause a longer period of time for us to do so. Our objective is to try to do that within three days. Part of that is we are looking at whether the water rights are in good standing, if the new location is within 300 feet, and sometimes also making sure that property ownership is consistent with the underlying water right.

**Assemblywoman La Rue Hatch:**

We have delineated between public and private lands before. Are there any other delineations in water rights between public and private lands, and are there more processes to go through?

**Micheline Fairbank:**

No. In this particular instance, these are existing water rights that in essence should be in good standing. We do not treat them differently with respect to the administration of that water right based upon the ownership of the land, whether it is federal, state, or private, or any other governmental entity.

**Assemblyman Yurek:**

I want to make sure my understanding of this is correct. It sounds like on private land, an individual could purchase a water right that gets vetted through the normal process, and purchases the water right on private property. If for some reason that well fails, collapses, whatever, as long as a new well is dug within 300 feet of that existing well on private property, that private owner does not have to go through the entire process. They can just dig the well again. It sounds like the challenge is, it is the same water right, which we just described, the same vetting process, and it is a private water right; however, this is on public land. Because the statute does not address that, what you are trying to do is this: say the person with the private water right which they have paid for and been vetted on, their well,

which happens to be situated on public land, collapses or for whatever reason needs to be replaced. As long as it is within that same distance of 300 feet, we would allow the well to be replaced without having to go through that process again. Is that a correct understanding?

**Assemblyman DeLong:**

Yes.

**Assemblywoman Considine:**

I am just trying to get a little clarification. I know that we have said a replacement well, and then it collapses or something happens to it. I cannot find what the requirements are to build a replacement well, to bore or sink a replacement well. The reason I am trying to find this out is, if you are on private property and you have a collapsed well, but you cannot go beyond the borders of your private property, if you bore another well 300 feet from the original well, then you bore another one, does that then become the original well and you can go 300 feet beyond that one if that one collapses? I am trying to find the borders, and I just do not see in the NRS where it says if a replacement well collapses, you must do this. Is this more of an amorphous definition?

**Assemblyman DeLong:**

I will start and then let NDWR finish off. The 300 feet is from the point of diversion which does not change; it is a constant 300 feet.

**Micheline Fairbank:**

We have administrative regulations in the *Nevada Administrative Code* Chapter 534 that govern our well-drilling regulations and it provides the definitions. Generally, the cost to drill a replacement well is a substantial cost endeavor. People are not typically just willy-nilly replacing wells. There has to be some fundamental deficiency within that well, and they are either unable to withdraw the water in the quantity or at the rate that they need in order to support their beneficial use. That is really what we are looking at. It is not a test; we do not go out and inspect and say, Maybe you can jiggle this and it will work just fine. It is an honor system, but there is also a financial check on that which puts in those guardrails in addition to our regulations.

**Chair Cohen:**

The original spot is the original spot. You are never going more than 300 feet from that original spot, correct?

**Assemblyman DeLong:**

Yes.

**Assemblyman Watts:**

You stated this does not modify anything with respect to federal law. What are the responsibilities to the federal land management agency related to water developments on

public lands? I understand the waters of the state are managed by the state. If you are going to sink a well and put a trough out for livestock, for example, what are the responsibilities to the federal land management agency?

**Assemblyman DeLong:**

I can briefly touch on those. I do not want to go into a long discussion about BLM regulation, but it depends on the type of land use authorization. If it is for grazing, it would be an allotment management plan between the BLM and the rancher. It might be a BLM Form 2920 land use permit. It might be a plan of operations under Title 43 of the Code of Federal Regulations Subpart 3809. It depends on the statute and the regulations that the use of the land is authorized by the BLM.

**Assemblyman Watts:**

Would there have to be some additional notification or other revision or process undertaken with a land management agency? It sounds like with the wide scope of potential water right users this could apply to, there might be a lot of different agreements with a federal land management agency. The question I am getting to is, would there still be requirements depending on the scenario to either notify the federal land management agency or go through some process to gain approval to modify the location of a water development?

**Assemblyman DeLong:**

In my mind, it would depend on the scope of the authorization from the BLM. I would think that there would be, but it depends on the scope of their authorization.

**Assemblyman Watts:**

It sounds like it depends, but in some cases, yes, and that process would still exist regardless of this. Did you discuss with the agency, given the ideal timelines for processing these and the historic under-investment in our state's Division of Water Resources and increasing staff in our water rights division, to make sure that we are able to process these on an adequate timeline instead of seeking to change the existing NRS?

**Assemblyman DeLong:**

As a freshman, I did not want to get into putting in a bill that would increase staffing in any agency. So, no, I did not do that.

**Assemblyman Watts:**

All right. I will work on that for you.

**Assemblywoman Hansen:**

I have just a little information for when we talked about the cost of the well being a check on willy-nilly well drilling. In 2003 or 2004, we had to redrill our well for our property in Spanish Springs for our home. It was only 125 feet and it cost \$42,000. That gives you an idea and then adjust for inflation. Also, wildlife on the public lands benefit by the stock water used.



**Assemblywoman La Rue Hatch:**

If the original well is on private land, and within 300 feet of that well is public land, under this law, would they be allowed to drill on public land without applying for this permit?

**Assemblyman DeLong:**

I do not have a legal answer for that. If you are going to do something on public land that you did not have a previous authorization for, you would need to get that. I know from the federal side you would have to do something. The Division of Water Resources might be a better one to address the specifics of your question.

**Nicolas C. Anthony, Committee Policy Analyst:**

The way it is written, the original site of the well and the site of the replacement well on public lands or on property owned—if you wanted to further clarify, certainly that amendment could be made.

**Chair Cohen:**

I have a question about aquifers. If you drill 300 feet away, you could be in a different aquifer, right? You could end up in the water of a senior rights holder, is that correct?

**Assemblyman DeLong:**

Without knowing the specifics of a given location, it is hard to tell, but there is always the possibility of that being the case.

**Chair Cohen:**

Would the state have an obligation if the rancher goes into someone else's senior rights holder's water?

**Assemblyman DeLong:**

I would rather that NDWR address how they deal with concerns between water right holders.

**Micheline Fairbank:**

When it comes to looking at the replacement wells, in theory the new well should not create a conflict with an existing right. Certainly there are possibilities where there could; for example, if you are moving closer to an existing domestic well or something of that nature, and if it is a large irrigation pump, something like that could create a conflict. That can transpire on private lands as well. Previously the way our agency functioned was we would not allow the movement beyond those 300 feet if the new point of diversion stepped outside of the quarter of a quarter. We look at things in township and range. If it was crossing that quarter quarter line, we would not allow that new well to be replaced in that location. That is what originated this change to the legislation, I believe it was in 2019. This is kind of an evolution of that. What will not happen is if a well is being moved 300 feet and it would move outside of that basin boundary—we look at our hydrographic basins and there are places in the state that the boundary between two separate basins is hardly discernible—we would not move that water right into a new basin because that would be a fundamental

change, and we would have a whole different process for accomplishing that. For the replacement well, we are looking within the basin 300 feet, we no longer adhere to having to remain within the same quarter quarter, and that would apply now to those wells located on public lands.

**Chair Cohen:**

If the new well is on public land, do we have to worry about any issues with someone coming along and using it or if there are any quality issues with the well?

**Micheline Fairbank:**

We are regulating the diversion of the water, whether they have satisfied their statutory criteria in order to have an appropriated right, or if they have a claim-affected right. For the replacement well, are they going through the appropriate statutory and regulatory criteria for the drilling of that replacement well. In terms of those other concerns and uses, when we think about whether they have authority to do it on the private lands, those are all parts of the agreement with the public landholders or whoever that landholder is, as Assemblyman DeLong articulated. We have existing wells throughout the state on public lands and what people do with them—vandalism happens everywhere—but that is not really our regulatory lane. It is the well owner's responsibility to maintain the service of his well.

**Assemblywoman Brown-May:**

I am curious to know, would you know if somebody was going to move their well? This is the person who is not required to file an application to change the place of diversion. Would you know if they were even going to do it at this point?

**Micheline Fairbank:**

The well drillers are licensed and the well driller who would be performing the work has obligations in order to maintain their well driller's license. There are penalties if they do things in violation, and filing that notice of intent to drill is one of those criteria that could result in penalties or disciplinary action against the well driller. In our experience, well drillers are historically very forthright and make sure they are doing the right thing. That also helps keep water right owners honest.

**Chair Cohen:**

Seeing no other questions, we will move on to support. Is there anyone in Carson City in support of A.B. 91?

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

Water developments provide significant contributions to effective livestock grazing on federally managed lands. Through the distribution of livestock across grazing permits by way of privately owned and maintained water resources, range conditions are improved and it benefits everyone. We support A.B. 91 as part of this principle. When a livestock water well is in need of replacement, the ability to redrill a replacement well within the guidelines outlined in A.B. 91 should be allowed. We appreciate Assemblyman DeLong bringing this bill forward and strongly encourage your support for passage of A.B. 91.

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

I am a rancher and owner of both private wells and wells on public land. I just wanted to say, the issue of the need to do this, I think everybody is okay with that. When you have a catastrophic collapse, we cannot wait until Monday for the office to open. We need to get it done right away. The cattle, just like any livestock, cannot go without. I have a couple of answers to some of these questions. One is you cannot have a grazing permit without having a bona fide water source. The agency is not going to issue you a grazing permit unless you have water. Whether it be a stream, a well, or a spring, you have to have it. The approval should be there. If it is not, then that is up to the agency. Some of the permits we own have been owned for several years or several decades. I just wanted to make that straight. On private land, if you had a well and you wanted to go 300 feet, I would avoid going onto the public grazing area. I would do it on private because you do not have the approval and it is going to take a long time. I just wanted to straighten that out. Thank you.

**Shannon McDaniel, Private Citizen, Carson City, Nevada:**

I am a licensed professional engineer and a licensed Nevada water rights surveyor. I previously worked for the Division of Water Resources for nine years, leaving as the chief of the well drilling regulations and adjudication sections. I currently work as the water rights manager for Resource Concepts, Inc. In 2022 I was a Democratic candidate for Assembly District 40. My platform focused on the resources with the intent of A.B. 91 being one focal piece. I am here today representing myself to testify in favor of A.B. 91. Assembly Bill 91 as introduced is seeking to clarify language introduced during the 2019 Session by Senator Goicoechea and Senator Brooks. Senate Bill 236 of the 80th Session passed, allowing owners of water rights to drill a replacement well if the replacement well is within 300 feet of the point of diversion as described in their permit provided they also own the land on which the well is located. As written, this language excluded owners of wells located on public land and creates a disparity in how well owners are treated depending on whether the well is located on public or private land. The language passed in S.B. 236 of the 80th Session forces owners of water rights on public land to file applications to change the point of diversion rather than being able to drill a replacement well within 300 feet. This creates an undue burden on the water right owner and subsequently increases Division staff time to work through the change application process. Assembly Bill 91, as introduced, extends the ability to drill a replacement well within 300 feet to legal owners of water rights having wells on public land and will put them on equal footing with people on private land. Assembly Bill 91 does not allow the migration of that well outside of 300 feet from the original point of diversion. This small change will assist the Division of Water Resources by reducing the time and resources expended processing extraneous applications, it will provide equality for all well owners, and it will help licensed Nevada well drillers comply with the statute. Thank you.

**Annalise Porter, Associate Public Affairs Analyst, Public Services, Southern Nevada Water Authority:**

We are supportive of this measure. Thanks for hearing the bill.

**Wade Poulsen, General Manager, Lincoln County Water District:**

We have several water production wells in our projects currently in Lincoln County, and a vast majority of them are on public lands. If something were to happen with those wells, we would like the opportunity to be able to move 300 feet and drill another well. It is expensive to drill these deep wells. We also agree with the fact that this brings public lands as well as private lands into coherence with the law of water so that the public lands are not excluded. There are rights-of-way that we have to provide and get from the BLM to be able to drill these wells. We have done that, and we have those rights-of-way that have been gifted to Lincoln County Water District. Thank you and we urge you to support this bill.

**Steve Walker, representing Eureka County:**

Eureka County is in full support of A.B. 91.

**Chair Cohen:**

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

**Casey Roberts, Private Citizen:**

I am giving my support for this bill, A.B. 91. I feel like it is discriminatory to say that private people can, but public people cannot drill wells. I am in full support of our ranchers, of our farmers, and definitely like that cow meat. Please keep them watered well, and you have my full support.

**Chair Cohen:**

Hearing no other callers, we will come back to Carson City for those in opposition.

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

We are opposed to this bill. I would say the law this bill is trying to emulate is extremely flawed. The wrong move would be to now apply it to public land. When you move a well, you are supposed to file a change application, change in the point of diversion. The State Engineer should evaluate that for conflicts with existing water rights, conflicts with protected interests in domestic wells, and detriment to the public interest, which includes the environment. Under existing law, the moving of the well 300 feet is not subject to analysis under those terms because the State Engineer is not given discretion on those that move. Applying that to public land makes this problem worse because then you are applying it to a much broader swath of area; 300 feet may sound insignificant, but it is really not. When you turn on a well, you begin creating a cone of depression where that pumping is occurring. If you move 300 feet, you are moving the cone of depression as well. You may be moving it closer to a spring or to a wetland or to someone else's well, and there could be detrimental impacts to those resources. Without the State Engineer having discretion to analyze that and render a decision, we are then going to be operating without full information and without full evaluation of the potential impacts of that move. We do oppose this bill and thank you.

**Will Adler, representing Pyramid Lake Paiute Tribe:**

Pyramid Lake Paiute Tribe would like to first thank Assemblyman DeLong for bringing this bill forward because we understand the need to have some flexibility when it comes to well choice and placements, but also want to bring forth some concerns because the nature of tribal lands and the continued conflict we have around our own borders is frequently around tribal land. You will see this checkerboard pattern that is sort of a private, public, private, public checkerboard that we are frequently seeing folks who have a little corner of a checkerboard and place a well right on the edge of the land, then he can jump it over to the other side of that checkerboard. That creates a concern of putting our arms around where these would be allowable, where this movement could be allowed. Any time there is lack of notice or communication when it comes to a new well being drilled, that is tough for the tribe to take in its entirety. At this time the base policy is when we run into a well that ends up being a conflict or one that has issues with the tribe, or they drill it at a bit of an angle to try to get that spring a little bit closer. The hardest thing is to move a well that is already there. It is actually easier to stop when they never get placed in the first place. Based on those concerns and the baseboard of having that checkerboard around tribal reservations, we have to file opposition.

**Chair Cohen:**

Seeing no other opposition in Carson City, Las Vegas, or Elko, is there anyone on the phone? Hearing no one, we will go to neutral in Carson City, Las Vegas, or Elko. Seeing no one, is there anyone on the phone in neutral? Hearing no one, would the sponsor like to make closing remarks?

**Assemblyman DeLong:**

I want to say thank you to the Chair, Vice Chair, and the Committee for the opportunity to go through my first hearing on a bill. Thank you.

**Chair Cohen:**

With that, I will close the hearing on Assembly Bill 91. I will move on to public comment. Is there anyone for public comment in Carson City, Las Vegas, or Elko? Seeing no one, is there anyone on the phone? [Public comment was heard.] Does the Committee have any comments? Seeing none, we are adjourned [at 5:21 p.m.].

RESPECTFULLY SUBMITTED:

---

Nancy Davis  
Committee Secretary

APPROVED BY:

---

Assemblywoman Lesley E. Cohen, Chair

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

## **EXHIBITS**

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a Nevada Capital Improvements Grant Program map, submitted by Jennifer Carr, P.E., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.

[Exhibit D](#) is a Nevada Drinking Water State Revolving Fund map, submitted by Jennifer Carr, P.E., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.

[Exhibit E](#) is a Nevada Clean Water State Revolving Fund map, submitted by Jennifer Carr, P.E., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.

[Exhibit F](#) is a letter dated March 22, 2023, submitted by John Flansberg, Administrator, Regional Infrastructure, City of Reno, in support of [Assembly Bill 20](#).