

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

**Eighty-second Session
May 11, 2023**

The Senate Committee on Natural Resources was called to order by Chair Julie Pazina at 3:35 p.m. on Thursday, May 11, 2023, in Room 2144 of the Legislative Building, Carson City, 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 Julie Pazina, Chair
Senator Melanie Scheible, Vice Chair
Senator Edgar Flores
Senator Pete Goicoechea
Senator Ira Hansen

GUEST LEGISLATORS PRESENT:

Assemblyman Howard Watts, Assembly District No. 15

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Erin Sturdivant, Counsel
Cherie Dittler, Committee Secretary

OTHERS PRESENT:

Be-Be Adams, Friends of Nevada Wilderness
Christi Cabrera-Georgeson, Deputy Director, Nevada Conservation League
Larry Johnson, President, Coalition for Nevada's Wildlife
Bari Levinson, Sierra Club
Kyle Roerink, Great Basin Water Network
Bennie Hodges, Manager, Pershing County Water Conservation District
Annette Magnus-Marquart, Executive Director, Battle Born Progress
Andy Belanger, Southern Nevada Water Authority
Chris Mahannah, Churchill County; Truckee-Carson Irrigation District; Newlands Project

Senate Committee on Natural Resources
May 11, 2023
Page 2

Jay Dixon, Flying M Ranch
Patrick Donnelly, Director, Great Basin Center for Biological Diversity
Cynthia Moore, Coordinator, Nevada Environmental Justice Coalition
Laurel Saito, Water Strategy Director, The Nature Conservancy, Nevada Chapter
Leo Drozdoff, Truckee Meadows Water Authority
John Hadder, Director, Great Basin Resource Watch
Robert Coache
Olivia Tanager, Environmental Justice Program Manager, Progressive Leadership Alliance of Nevada
Linda Stout, Sierra Club, Toiyabe Chapter
Christina Erling, Nevada Gold Mines
Kyle Davis, Nevada Mining Association
Doug Busselman, Executive Vice President, Nevada Farm Bureau

CHAIR PAZINA:

We will open the hearing on Assembly Bill (A.B.) 70.

ASSEMBLY BILL 70 (1st Reprint): Revises provisions relating to the uses of certain fees for a game tag. (BDR 45-342)

ASSEMBLYMAN HOWARD WATTS (Assembly District No. 15):

Assembly Bill 70 originated in the Joint Interim Standing Committee on Natural Resources, of which I was the Chair. The bill relates to a \$3 fee collected on big game tag applications. It has primarily been used for the management of predators, including the lethal removal of predators. It is fair to say it has been paid by sportsmen under the concept that predator management and removal is for the benefit of the big game species that sportsmen are pursuing.

There exists in *Nevada Revised Statutes* (NRS) 502.253 a requirement of how the proceeds of that fee are to be spent. The bill in its original form, proposed to eliminate that and provide the Nevada Department of Wildlife (NDOW) managers discretion to allocate the fee as they see fit.

There are very passionate opinions and multiple perspectives on this issue regarding appropriate predator management tactics and what is of the greatest benefit to big game species. In conversation and consideration of all those voices and the concerns that were raised, I am understanding that some of

those folks want to see 100 percent of those funds to go to lethal removal of predators that are impacting game populations.

Other Nevadans want to see the funds go to habitat improvement, restoration, and other projects that they might feel are of even greater benefit to wildlife. I think the honest answer to the question of which approach is more beneficial is "It depends." It is situational based on many different factors.

Before you, in its first reprint, A.B. 70, essentially proposes that the sportsmen can choose. At the time that they are applying for these game tags, they can direct their \$3 fee either toward lethal removal of predators or toward other programs for the benefit of game species.

I have provided an amendment, ([Exhibit C](#)). The intent of the amendment is to try and align some of the language between the bill as introduced and the proposed amendment. I will go over the amendment with you.

Section 1, subsection 1, paragraph (a) is essentially that program for the lethal removal of predatory wildlife.

Section 1, subsection 1, paragraph (b) would be developing an annual program to provide for habitat improvement and research or management beneficial to non-predatory game species.

We also cleaned up the language between the two options.

SENATOR SCHEIBLE:

I sat on the Joint Interim Standing Committee on Natural Resources, and it was very difficult to achieve any compromise on this bill. Realistically, are we going to be re-routing any money to the habitat improvement program? Or is everybody going to elect to continue to put their \$3 toward lethal management?

ASSEMBLYMAN WATTS:

I am not sure. I just put in my application. Given the choice, I would dedicate my money toward the habitat program. There are others who will do the same. Just because certain people are vocal on an issue does not always reflect the total universe of people. We could end up with an 80-20 split, a 90-10 split or even a 50-50 split on how those funds are allocated.

The final proposed bill is not what I initially envisioned, but I think it gives some peace of mind for people to evaluate their options and have control over their \$3 fee.

People have different perspectives on this issue. Although I think NDOW is the expert, others do not agree with them and do not always like the decisions they make. The amendment provides some degree of certainty, which was the compromise we made. The bill lets applicants know their \$3 application fees will go to one option or the other, and they make that choice.

SENATOR GOICOECHEA:

The bill requires all big game applicants to check a box to designate where they want their \$3 fees to go to habitat management or lethal control. Will an application be rejected if the applicant fails to check a box? How do you plan to implement the change?

ASSEMBLYMAN WATTS:

I believe NDOW will be testifying in neutral later, so they can correct me if I misspeak. For online applications, there are check boxes, where you can select one, more than one or none. An option button will be added requiring applicants to check either option. Applicants cannot move forward in the online licensing process if they fail to click a box. I believe the fee option can be implemented easily.

SENATOR HANSEN:

When you apply now, you cannot finalize it until you have checked off every box, so I imagine you will have to make a choice one way or the other to continue with the application process. I support A.B. 70 as amended, it is a good compromise.

This goes back to a time when Jerry Clayborn was an Assemblyman, a Las Vegas guy named Cecil Fredi had Hunter's Alert and Gerald Lent and I were involved. That was when this fee was initiated, 20 years ago. The \$3 fee has not been increased in over 20 years, but that is a future discussion. This is a good compromise.

In view of this last winter's weather, I look forward to hearing from NDOW Director Alan Jenne. I just read some of the Bureau of Land Management's data from flights on wild horses. It has been a disaster this

winter. Ironically, the predators do not go down proportionally because as those animals die, they provide food for the predator populations. You then get a disproportionately high number of predators versus a shrinking number of prey. This will be a year when NDOW will really need to cull the predator population and use those lethal fees to do it.

There will also be people who have different views than me, and more like you, frankly on this issue. It will be interesting to see how people check the \$3 fee box. It will be interesting to review this in a few years.

I support the amended bill and appreciate how you worked with so many different entities to come up with a fair compromise. I know it has been a struggle.

ASSEMBLYMAN WATTS:

These are complex issues. There are benefits from both the targeted lethal removal of predators and maintaining proper habitat. This winter, many variables have had an impact on wildlife populations. I hope A.B. 70 provides some flexibility to take on those various management needs for the benefit of our wildlife populations. I agree it will be interesting to review the data and see how the \$3 fee is distributed.

CHAIR PAZINA:

I salute you for working so aggressively with both parties to reach a reasonable compromise. We will hear from those who support A.B. 70.

BE-BE ADAMS (Friends of Nevada Wildlife):

I submitted a statement of support ([Exhibit D](#)) for A.B. 70 representing Friends of Nevada Wildlife. We support the bill as amended, eliminating the 80 percent lethal predator mandate and providing big game applicants a choice on how their \$3 fee will be applied. As a bonus, the second option, wildlife management, generates a three-to-one match in funding from the federal government's Wildlife Restoration Act.

CHRISTI CABRERA-GEORGESON (Deputy Director, Nevada Conservation League):

This bill allows big game applicants the option of designating their \$3 fee to benefit wildlife management activities they believe provide the greatest benefit to both wildlife and habitat. Sounds like a win to us. We urge the Committee to support A.B. 70.

LARRY JOHNSON (President, Coalition for Nevada's Wildlife):

We support A.B. 70 as amended and want to thank Assemblyman Watts for working with us and developing the proposed amendment.

BARI LEVINSON (Sierra Club):

I am speaking on behalf of more than 30,000 members and supporters of the Sierra Club Statewide in support of A.B. 70. I have submitted written testimony ([Exhibit E](#)) in support of the bill. The \$3 fee currently collected from big game applicants calculates to about \$1 million each year in an attempt to increase the number of deer, sage grouse and bighorn sheep in Nevada.

Law requires that 80 percent of the fee collected must be used to lethally remove predators including coyotes, ravens and mountain lions. This is required whether or not these predators are the cause of population declines of the game animals. Sierra Club supports A.B. 70 as amended, because the lethal mandate is not always necessary and can be harmful.

We should allow NDOW the flexibility for its biologists to use the most scientifically proven methods to protect the game species, along with the predators and all of their ecosystems. This may include installing guzzlers, seeding sagebrush, or other habitat-enhancing programs to increase deer, sage grouse and bighorn sheep populations.

Since the 80 percent lethal mandate has been in place, deer and sage grouse populations have remained in steep decline. So obviously, the current program is ineffective and only serves to remove predators that our ecosystems depend on for balance.

Coyotes, for example, are essential in controlling rodent populations. We understand that this bill will allow hunters to choose how their \$3 game tag fee will be spent, either on lethal predator activities or on protection of the game animals and their habitat.

We hope and trust that hunters will make their choices based on their own research or on the recommendations of experts such as those at NDOW. When this bill is enacted, we strongly encourage the education of hunters to make good choices to preserve not only the game species but the entire ecosystem. We urge the Committee to support A.B. 70.

CHAIR PAZINA:

Prior to this meeting, the Committee received a letter ([Exhibit F](#)) from the Clark County Republican Party in opposition to A.B. 70. Hearing no other speakers who are opposed or want to speak in neutral, I will close the hearing on A.B. 70 and open the hearing on A.B. 387.

ASSEMBLY BILL 387 (1st Reprint): Revises provisions relating to water.
(BDR 48-338)

ASSEMBLYMAN HOWARD WATTS (Assembly District No. 15):

This bill was also developed on the recommendation of the Joint Interim Standing Committee on Natural Resources. There were conversations during the last Interim about our statutes for water management. Also, the potential implications of a court case from Clark County District Court, about decisions that were made by the State Engineer were cause for concern.

In *Diamond Nat. Res. Prot. and Conservation v. Diamond Valley Ranch*, in 2022, the Nevada Supreme Court addressed decisions made by the State Engineer, whose office is in Division of Water Resources (DWR) in the Nevada Department of Conservation and Natural Resources.

There were many issues involved, it was a very complex filing. It involved multiple groundwater basins, connections between groundwater and surface water, and a lot of hearings and processes and decision-making made by the State Engineer. There were a range of issues from those related to due process, but really what caught the Committee's attention and interest were some of the things it brought to light around our statutes.

One issue that caught our attention was the existence of a legislative declaration encouraging the State Engineer to use the best available science in decision-making, but nothing actually in statute clearly directing the State Engineer to do so.

As DWR already uses scientific methods to make decisions, it may seem counterintuitive to what else could be involved in making those decisions, including how to define "best available science." Defining any water law term is a difficult enterprise. There is a range of unique and complex dynamics as you move from one area to another in terms of hydrological science.

But one idea that was put forth is that legislative declarations do not provide the same authority as a statute. Declarations express our State interest or provide some direction on how statutes are executed, but they are not statutes themselves.

In the past, we have had conversations in this Body about using the best available science in decision-making or the conjunctive management of our groundwater and surface water, which are legally separated. They are in different chapters of NRS. Surface water law was developed much earlier than groundwater law.

We now understand there are connections. Groundwater pumping near surface water can actually pull on those surface water flows. We know that groundwater springs are a type of groundwater discharge that then becomes surface water. There are a lot of interactions in reality, but legally, they are quite separate.

When we tried to address that at the State level, we could not agree on anything, so we put something in legislative declaration. That was called out as not actually providing the authority for the State to do those things.

Finally, questions were raised about the ability to potentially combine groundwater basins for management purposes, if it is determined that there are hydrologic connections across multiple basins. Figuring out how we manage our existing water law and standards, such as beneficial use and honoring prior appropriation, but understanding that can get complicated if water is managed through a basin-by-basin approach.

If water from one basin is flowing into another, the conflicts that arise must be addressed outside of just the seniority of one basin. Those were the key elements included in A.B. 387. To be clear, the goal of this bill was not to direct the ultimate outcome of the Nevada Supreme Court decisions, which is currently on appeal.

We realized that a Nevada Supreme Court decision could reduce some of the authority and management actions that the State Engineer has been exercising. We thought it was important to try and clarify, particularly where we already have some things in NRS, but as legislative declarations, and not actually within our statutes governing how water is managed.

There have been many conversations on this legislation throughout the State, and I suspect that nearly every water right holder and stakeholder is either in the room today or listening on the telephone. We previously created a stakeholder group to discuss water law conflicts and solicit feedback, and ongoing conversations have been the best way to address the myriad of water issues Nevada is facing.

We have worked to figure out how to address these things and hone these concepts in to ensure it does not result in a broad expansion of power. We want to create legislation that provides clarity and more certainty for water right holders and stakeholders, while reducing concerns.

That is what lead us to A.B. 387 as it stands today. We continue to engage in meaningful conversations to tighten up certain areas of the bill. One sticking point remains regarding the idea of combining and managing groundwater basins.

You will probably hear the term "super basin" in testimony today. Those result when multiple individual basins are combined and essentially managed as one basin. In 2015, S.B. No. 2 of the 29th Special Session enacted a statute that actually designated a super basin around Apex in southern Nevada.

The decision by the State Engineer that was challenged, *Diamond Nat. Res. Prot. and Conservation v. Diamond Valley Ranch* also involved the combining of basins.

There has been much concern about the practice of combining basins and that authority generally. We have discussed the best way to break down the legal fiction and address conflicts because they can and will occur. We know that there is a connection between surface water and ground water in different circumstances.

We know that there is connection of water between groundwater basins, particularly when you get into the deeper groundwater aquifer systems.

So, we know that conflicts are going to arise. We want to ensure the State is empowered to manage those using the existing water law framework. We are trying to really focus on that and get away from talking about basin combination, which is at a much larger scale. That is something that has been

contentious and has also been done elsewhere in statute; we are not trying to touch that in A.B. 387.

Unfortunately, we have not yet found language upon which we can all agree. Those conversations are ongoing, and we will keep trying. I want to acknowledge those concerns up front. I am really looking for that solution. I hope that we can find something to bring forward to this Committee for consideration.

I will explain what A.B. 387 will accomplish. The bill removes the legislative declaration in NRS 533 that "encourages" the State Engineer to consider the best available science and replaces the word "encourages" with "shall" in NRS 533, section 3, subsection 1.

Section 1, subsection 2, lays out a definition for "best available science." That been difficult to quantify, but we want to provide parameters, and a level of certainty with the understanding that best available science can vary from area to area. The language should provide the State Engineer with some leeway.

The key provisions are in Section 6 and Section 10 of the bill. What we are trying to do is to clarify that existing rights or uses of groundwater are subject to other existing rights and try to acknowledge that hydrological connection between surface water and groundwater.

When determining if there is water available to appropriate, the State Engineer will consider both basin water and hydrologic connection. The State Engineer may then conclude there may be less water available than previously thought, providing a reason to conduct an evaluation and decide. The bill makes clear that if a conflict with an existing right or use, due to activity in a neighboring groundwater basin is claimed, that can be taken into consideration.

CHAIR PAZINA:

I know there has been much discussion on this bill with you and the stakeholders.

SENATOR FLORES:

There is concern among stakeholders that sections 6 and 10 of A.B. 387 are in conflict, as two separate standards are set forth. Can you discuss the

relationship between the two sections and why there is no conflict through your interpretation?

ASSEMBLYMAN WATTS:

The bill adds additional language to section 6, subsection 2 that references groundwater rights. The first sentence "except as otherwise provided" in section 10 applies where there is no unappropriated water in the proposed source of supply, where the groundwater has not been committed for use or reserved, or where its proposed use or the change conflicts with existing rights. This language clarifies that those water rights are not just the rights within an individual groundwater basin. They could also be in an adjoining basin where they could be surface water rights, if they are hydrologically connected. So essentially, that hydrological connection would have to be demonstrated and proven.

This situation would only apply if an application were brought forward. You have to evaluate that hydrological connection if evidence is brought forward to that effect and consider that in making a determination.

The attempt was to really focus on the conflicts with existing rights and how we manage those. This is essentially trying to get at not appropriating water if it conflicts with existing rights. That includes a conflict related to a neighboring ground water basin or what otherwise might be legally considered a different source of supply.

Section 10, subsection 2 of existing statute addresses that all underground water within the boundaries of the State belong to the public and are "subject to all existing rights to the use thereof," and subsection 1 says "if the State Engineer finds that a hydrologic connection exists that is sufficient to cause a conflict with existing rights." That language clarifies the concept of hydrological connection. This puts water right holders on notice that any appropriation or use of water is subject to review if a conflict occurs across basin boundaries or involves groundwater and surface water interaction, subject to existing rights.

There has been much discussion on what happens if the State Engineer does find that a hydrologic connection exists in a disputed water situation; is it acknowledged outside of one individual basin or between groundwater and surface water? We will continue to discuss greater clarity to the statutory

language to ensure there are no potential conflicts. Our conversations will remain ongoing.

SENATOR FLORES:

The bill states that the State Engineer will use the best available science to make decisions and provides notice of the standard that will be used. When discussing best available science, there will always be conflicts about what that means. Can you please explain the definition of "best available science" and confirm A.B. 387 does not expand the State Engineer's power or authority.

ASSEMBLYMAN WATTS:

The goal of A.B. 387 is to clarify the law, not expand it. There have been disagreements about the State Engineer having the authority to make certain determinations, but when discussing this bill with stakeholders, the consensus was that there is no need to create legislation that is already addressed in NRS. There is concern about adding something in.

I consider the potential impact of a case moving through the judicial branch and the outcome, whether the State Engineer's decision was upheld or overturned. There are also due process and other issues and questions that were raised and addressed on appeal.

The goal of the bill is to clarify water law statutes to ensure that certain authorities are not weakened and to keep water law as it is now. The purpose of A.B. 387 is not to give the State Engineer more authority than he has now but to clarify his existing authority.

In response to your question about best available science. It is a difficult concept to define, and I would say that the concept includes both science and decision-making. In general, best available science includes the most robust and sound science since there can be competing analyses brought forward on the same issue. It seems like common sense, but how do you define it?

In my opinion, the State Engineer makes the determination when people bring their case forward, either in support of or protesting a determination. The determination would then be subject to judicial review which is when the best available science would be defined. The legislative declaration already contains language to that effect and A.B. 387 will codify it.

SENATOR GOICOECHEA:

The concept of hydrologic connections between surface and groundwater is not being challenged. The conflict is to what extent it is occurring. Until the State can balance these over-appropriated, over pumped basins, we do not know the extent of the problem. How do you determine what that conflict is?

ASSEMBLYMAN WATTS:

The goal of A.B. 387 is to provide balance, not being so overly prescriptive that it cannot work in different scenarios, but also to provide some clarity about what can be determined. At a high level, we all agree there is more work that needs to be done. In some previous instances, conflicts have arisen and decisions were made to manage and address them. This bill envisions that same authority continues on, as we do that work to try to bring these over-appropriated and over pumped basins back in balance.

At a high level, these will continue to arise as we continue to evaluate different areas, and as folks bring the best available science forward.

I see a value in creating a general policy for how to address it now, understanding there is going to be a lot more work to be done and it will ultimately reveal more instances where we will need to have some kind of process in place.

SENATOR GOICOECHEA:

We are talking about conflicts and how to mitigate them and address them. The bottom line is we need to deal with the start of the problem, which I feel is in NRS 534 and the fact that we are over-appropriated, and in many cases over pumped.

I think if you can bring that into a balance and heal it up, then I do not know if the problems, and clearly the litigation we would be facing, would be nearly as strong. If we jump out and establish a procedure, I think we are headed to court, and I really hate to see that.

Our first task is to balance the groundwater basins. They were technically second in time surface water rights in NRS 533. They are clearly priority water rights and are clearly being impacted; nobody would disagree with that.

The best way for the State to clean it up is addressed in NRS 534 and the over appropriated basins. It is far simpler, it is an easier fix, even though it is a little more draconian, and there is other proposed legislation that will provide a soft landing. We must curtail groundwater pumping. You know it, I know it and everyone in the room knows it. Nevada is over-appropriated and over-pumped.

I get concerned when we start combining over-appropriated and over-pumped basins. It makes water management more difficult. We have had this conversation before, and you know my position. Combining basins does not change the fact that both of the combined basins are over pumped.

ASSEMBLYMAN WATTS:

We generally agree that curtailment is the overarching need. Many policies help move Nevada closer to sound water management and to ensure proactive measures will keep Nevada from experiencing worsening situations that need unwinding. I believe A.B. 387 is the best overall approach to addressing the water crisis in the State and ensuring that water rights in neighboring basins are considered. Impacts on surface water will affect senior water rights; that much is clear.

This bill will help work toward the goal of getting water basins back in balance, while using a holistic science-based viewpoint. I understand the concerns with the complexity and the challenges of combining basins. We have struggled to determine the best way of addressing that. We are just not there yet.

CHAIR PAZINA:

Prior to today's meeting, the Committee received four letters ([Exhibit G](#)) in support of A.B. 387. We now will hear from others in support of A.B. 387.

KYLE ROERINK (Great Basin Water Network):

I represent an organization that has been advocating for and defending senior water rights and the public interest for over 30 years in a variety of arenas. We are discussing many truths today.

One truth is the statement that hydrologic connectivity is real, water rights know no borders. Another truth: Junior rights holders are harming senior rights holders. Another truth: Junior rights holders are harming the public interest. Another truth: Junior rights do not want to be curtailed.

That is why we are seeing a lot of opposition here; it is resistance to curtailment. Another truth: The State Engineer is between a rock and a hard spot and A.B. 387 provides clarity for that position.

Opponents of this bill want you to believe that white is black, sand is grass, and paper water is wet water. We are living in times of scarcity. This bill, especially as outlined in section 10, is subject to existing rights. To address scarcity, we must curtail water use to protect the most senior rights and the public interest.

This bill does not harm or take away water rights, but it does protect public interest. The bill cleans up mistakes of past regulators who over-appropriated. We talk about how much paper water we have. The reality is that we have more water on paper than we do in real life, but are we going to do anything about it? We ask the Committee to support A.B. 387. The bill respects senior rights and protects public interest. Assemblyman Watts has done a great job of gathering stakeholder input and protecting senior rights. It could not have been easy.

BENNIE HODGES (Manager, Pershing County Water Conservation District):

For over 30 years, I have managed the Pershing County Water Conservation District (PCWCD), the irrigation district in Lovelock. Our water source, Rye Patch Reservoir, is fed by the Humboldt River, and we use surface water for flood irrigation. Prior to 2017, the NRS recognized surface water and groundwater as two separate statutes. In 2017, the Seventy-ninth Legislature approved a legislative declaration proclaiming that all waters of the State would be managed conjunctively, regardless of the source. Passage of A.B. 387 would give the State Engineer the tools to conjunctively manage surface and groundwater.

For example, Pershing County farmers have been negatively affected by over-pumping and the drought. A full allotment for farmers is three acre feet (AF) per year in the PCWCD. In the last 20 years, farmers have had no allotment in 3 of those years and a 50 percent allotment in 9 of those years. In the last three years, farmers received greater than 50 percent but less than a full allotment. Farmers have received their full allotment of water in only 5 of the last 20 years. This year, farmers finally received their 100 percent allotment.

Now let us look at the groundwater pumpers allotment. Most agricultural underground pumps have an allotment of 4 AF per year and have received

100 percent of their allotment over the past 20 years. That is even though surface water in the Humboldt River is senior in priority to underground water.

Passage of A.B. 387 would provide guidance and tools so the State Engineer can address this imbalance and the over-appropriation of groundwater basins. I ask the Committee to support A.B. 387, because simply put, it is the right thing to do. This bill will help Pershing County farmers and benefit surface water users on the Humboldt stream system. I have submitted additional testimony ([Exhibit H](#)).

ANNETTE MAGNUS-MARQUART (Executive Director, Battle Born Progress):

Mandating that the State Engineer shall use the best available science in making decisions regarding the management of surface and groundwater in Nevada will ensure that decisions are based on accurate and reliable information. This is critically important, as the entire State is dealing with a critical water crisis.

Using sound scientific data and analysis can help the State avoid unintended consequences or negative impacts on the environment, public health and other important factors. We support A.B. 387 and ask for the Committee's support.

ANDY BELANGER (Southern Nevada Water Authority):

We approached this Session to address three separate issues: best available science, hydrologic connection and the joint management of basins. Assembly Bill 387 addresses the first two issues, and it does so in a very narrow way.

The third area, the joint management of basins, was addressed during the 2015 Special Session that Mr. Watts mentioned. NRS 360.992 passed the Assembly and Senate unanimously, making many changes to State water law as part of S.B. No. 2 of the 29th Special Session. It allowed for expedited water right hearings on the Nevada Governor's Office of Economic Development projects through 2036. It limited the pool of protests and appeals on such projects to water right holders in jointly managed basins. It also acknowledged the State Engineer's authority to jointly manage basins that "share a unique and close hydrologic connection as a single source of supply." In fact, the State Engineer's ability to jointly manage basins was used as a factor to establish which basins would qualify for expedited hearings and limited protests and appeals. The legislation allowed only jointly managed basins established by

order before the effective date of the legislation to qualify for expedited hearings.

That legislation is already codified in statute and is not related to the joint management of basins. Assembly Bill 387 does not address the joint management of basins as the issue is already addressed in NRS 360.992. We previously heard testimony before the Assembly Committee that the State Engineer granted water rights in this State for 60 years before the first basin map was even created, suggesting that the maps cannot be changed. This statement was inaccurate as basin maps can be changed or fixed as appropriate.

Justice James Hardesty has been pleading and begging the State Engineer to adopt regulations to address folklore and issues that are not written down in the Office of the State Engineer. In November 2022, he interviewed with the *Nevada Independent*. In the interview, Justice Hardesty said, "We are dealing with a very old water law statute that has not been modified many times and as a consequence, there are some ambiguities and uncertainties." Justice Hardesty also opined that instability in water law is not healthy for the economy of any state that is so dependent on a declining resource.

There are measures the State can take to make our water law clearer, and we urge you to adopt a step-by-step approach when resolving ambiguities, so we are well-positioned for the future. We support A.B. 387.

CHRIS MAHANNAH (Churchill County; Truckee-Carson Irrigation District; Newlands Project):

I will submit a short presentation and testimony ([Exhibit I](#)) on groundwater and capture concepts. I speak today on behalf of Newlands Project water users who irrigate 80,000 acres, 120,000 acres if I include the land managed by Bennie Hodges in Pershing County. Fish and Wildlife and the State of Nevada are the largest water rights holders in the Newlands Project.

The best available science has concluded that although our surface groundwater is a connected resource, the sources have been managed separately. We are facing a conundrum: we have a river and own a well pumping water. The river water is senior, while the well water is junior. The best available science tells us that the well is capturing the surface water in a "capture model" although we cannot see the hydraulic connection. It is like not being able to look through the

second floor of this building and see what is transpiring on the first floor. Even though we cannot see the first floor, we know that certain things are probably happening there.

Our knowledge of groundwater is similar. If a diversion occurred on the surface without the necessary water permit, the State Engineer's Office could issue a cease-and-desist order. The Office could arrest the violator and levy a fine of \$10,000 per day. If the stream runs completely dry, the water user can continue pumping by taking water from storage. But when the Humboldt River flow resumes, the stream is less efficient because it has to refill that empty storage reservoir. The belief that NRS 533 only addresses surface water while NRS 534 only addresses groundwater is a fallacy. Statutes on surface water were codified as NRS 533 first, followed by NRS 534 with the development of deep turbine pumps and rural electrification. The reality is that although these two water law statutes were created separately, the water sources they address are hydrologically combined.

Groundwater is owned by senior rights holders who have water, and their livelihoods and economies have been developed around their priority water rights. It would be wrong to take a draconian approach and turn off their water. The Office of the State Engineer recognized that in Order No. 1329. The only fair approach is conjunctive management.

Other states have implemented a conjunctive management approach to water, including Colorado in 1969. It will take a creative toolbox of solutions to ensure groundwater users do not lose their access to water. Assembly Bill 387 defines best available science and requires the State Engineer to use it when making decisions. The bill is a step forward in Nevada water law. Using the best available science would result in standard application of the law should hydrologic connections exist and would apply both prospectively and retrospectively.

Assembly Bill 387 does not create super basins and would not result in the devaluation of groundwater rights or water being turned off. We need a more surgical approach to the conflicts. You cannot do brain surgery with a machete when you need a scalpel. The State must adopt a combined conjunctive management policy. This bill is not political; it protects water resources and prior appropriation doctrine. We support A.B. 387.

JAY DIXON (Flying M Ranch):

The Flying M Ranch has several thousand acre-feet of the most senior-decreed water rights on the Humboldt River. The Ranch believes the most effective way of protecting existing economies for industries and future economic development in the Humboldt River region is to provide regulatory certainty. We must stop pretending that NRS 533 and NRS 534 were purposely separated to manage surface and groundwater as separate sources; that position defies logic and ignores science.

We need to acknowledge and clarify the State Engineer already has the authority to protect existing rights. Nothing in our water right permit terms specifies that he is to protect existing rights only in certain areas; rather he must protect all existing rights.

Finally, provide the authority, to the extent that it may not already exist, to regulate hydrographic basins or portions thereof based on demonstrative conflicts with priority rights regardless of the source. We hope the Nevada Legislature will do the right thing and clarify that the State Engineer does have the authority to manage our limited water resources conjunctively while protecting and promoting the continued, sustainable development of our water resources. We support A.B. 387 as a step in the right direction and I have submitted additional comments ([Exhibit J](#)) in support of this bill.

PATRICK DONNELLY (Director, Great Basin Center for Biological Diversity):

There has been a remarkable degree of collaboration in developing A.B. 387, including stakeholders who will be sitting on opposite sides of the courtroom soon. We have found common ground to improve Nevada's water laws. I want to emphasize that although environmental groups may testify today, this is not an environmental bill. Assembly Bill 387 clarifies best available science as a guiding management principle. This bill does not create winners and losers. It creates science-based management which in some situations will produce a favorable environmental outcome. In other cases, science-based management will result in favorable decisions for extractive, agricultural and mining endeavors that are situationally dependent.

Science should guide management decision-making, which would consider the geographic location of pumping and diversion of water and how they relate to surface water. In reality, the primary beneficiaries of this bill are senior water

rights holders who often protect high quality environmental values, creeks, meadows, streams and springs.

By protecting senior water rights, we protect the environment. This bill is not a wholesale revision of Nevada water law, but a clarification of the State Engineer's existing authority to manage water based on science. In *Diamond Nat. Res. Prot. and Conservation v. Diamond Valley Ranch*, we submitted a brief which documented 24 instances in which the State Engineer employed joint management principles across the State in the past 50 years. Unsustainable pumping is taking place right now, and if A.B. 387 is not passed, the State Engineer will be unable to effectively address it. We have made a good faith effort to find common ground and a path forward, and the relationships and communication we have established will move us forward. Please support A.B. 387.

CINTHIA MOORE (Coordinator, Nevada Environmental Justice Coalition):

We support A.B. 387 and ditto everything that has been said during testimony. We urge the Committee to support this bill.

LAUREL SAITO (Water Strategy Director, The Nature Conservancy, Nevada Chapter):

The conservancy supports this bill. Nevada's groundwater aquifers provide drinking water and economic benefits and support groundwater-dependent ecosystems that rely on groundwater to maintain ecological structure and function. Most of Nevada's rivers are groundwater dependent, originating as groundwater seeps or springs, and benefit from other groundwater because of the connectivity of groundwater to surface water.

It is possible for groundwater use in one hydrographic area to affect surface flows in another hydrographic area. Assembly Bill 387 addresses the connectivity between surface water and groundwater by clarifying that the State Engineer must consider whether applications for water rights in a specific hydrographic area could negatively impact existing water rights. The State Engineer could then determine if the proposed water use would be detrimental to the public interest in any hydrologically connected surface water or groundwater use.

The bill also requires the State Engineer to consider the best available science in making water decisions affecting the State. The statutory changes

contemplated in the bill will enable the State Engineer to make science-based decisions about Nevada's important water resources. We appreciate the efforts of Assemblyman Watts and his work with stakeholders to move the administration of water resources in a more sustainable direction.

MS. CABRERA-GEORGESON:

We ditto the comments that have been made today. Our water resources are precious, and we must use the best available science when managing those resources. We urge the Committee to support A.B. 387.

LEO DROZDOFF (Truckee Meadows Water Authority):

We ditto the comments that have been made today. We are in full support of A.B. 387.

JOHN HADDER (Director, Great Basin Resource Watch):

We ditto the comments that have been made today. Water does not respect the artificial boundaries that we sometimes impose, and the State Engineer needs the authority to act conjunctively. We urge the Committee to support A.B. 387.

ROBERT COACHE:

I am a former Deputy State Engineer with 40-plus years of experience in the field of Nevada water rights. I am now a consultant. I want to thank Assemblyman Watts for bringing A.B. 387 forward and for his willingness to work with stakeholders. I worked for DWR over 30 years, and the State Engineer always used the best available science in making decisions. Including the term in NRS codifies the standard as law. Opponents of A.B. 387 believe that water rights in Nevada are issued and managed within the hydrographic basin of origin and the relative priority of water rights are determined within that specific hydrographic basin. They also believe that no water rights holder expects their water rights to be curtailed in favor of a water rights holder in a different hydrographic basin.

Opponents fail to acknowledge the hundreds of thousands of acre feet of decreed surface water and groundwater and the more than 24,000 applications filed and acted upon prior to the creation of the 232 hydrographic basins in Nevada. These basins were identified by the State Engineer in conjunction with the federal government in 1968. Opponents of the bill say the existing permanent terms do not contain language that a water rights permit is issued subject to all existing rights to the use of the water source that already exist.

The State Engineer finding that a hydrologic connection exists is sufficient to cause a conflict with existing rights. The exact language is "this permit is issued subject to existing rights." The permit terms do not say that the permit is issued subject to existing rights located within the hydrographic basin of origin. There is no special protection or permission allowing an existing junior water rights holder to impact senior water rights. Bill opponents believe administrative boundaries provide special protection and allow a junior water rights holder to detrimentally impact senior priority rights. They wrongly believe an administrative boundary is based on the geography of the basin and not the hydrology of a basin that was first mapped by the State over 60 years ago.

Bill opponents erroneously believe under current law and permit terms, all water rights holders can seek to enforce their rights by seeking an injunction in a court of law if pumping impacts a senior water rights holder. These conflicts should not be decided in a court of law.

OLIVIA TANAGER (Environmental Justice Program Manager, Progressive Leadership Alliance of Nevada):

The Alliance was founded in 1994 by Nevada activists to build a fairer and more just Nevada that puts people and the planet first. We recognize that Nevada is the driest state in the Nation and experiencing a severe water crisis, and thoughtful steps are needed to address the situation. We find that communities across Nevada experience environmental issues differently and water management is certainly no exception. Assembly Bill 387 would ensure that groundwater dependent ecosystems remain intact, resulting in the protection of springs and ecosystems that Indigenous Nevadan communities hold sacred and are at higher risk. Protecting senior water rights users is an important aspect to water conservation and ecosystem protection in Nevada. We support A.B. 387 and urge the Committee's support.

LINDA STOUT (Sierra Club, Toiyabe Chapter):

On behalf of over 30,000 members and supporters Statewide, we support A.B. 387. The Humboldt River, the lower White River flow system, the Death Valley flow system and other regions stand to benefit from this bill for many reasons. We need clarity, followed by action. We urge you to support this bill.

CHAIR PAZINA:

Prior to today's meeting, the Committee received two letters ([Exhibit K](#)) in opposition to A.B. 387. We will open testimony for others in opposition to A.B. 387.

CHRISTINA ERLING (Nevada Gold Mines):

We oppose A.B. 387. The combined effect of sections 6 and 10 of the bill amends Nevada water law to conjunctively manage the use of ground and surface water. The bill eliminates the 232 designated groundwater basins that have formed the basis of Nevada's groundwater law since 1968. The proposed bill is premature and incomplete. Stakeholders need to understand the true status of the water basins in the State.

The proposed changes will impact water users as it does not properly evaluate what tools the State Engineer will need to make decisions and the mandates that must be followed to transition into a new series of water laws. We support the concept of conjunctive management, if properly studied, implemented and regulated. The legal distinction between groundwater and surface water has been applied in Nevada water law for over a century, and monetary investments have been made based on existing law. Much of our economy has developed around these investments. The wholesale revision to Nevada water law must be done very carefully to avoid harming the State's economy and creating unconstitutional takings.

Other states have implemented conjunctive management with some success, only because they studied and understood issues for their particular water basins, and they designed their laws to include transition tools to meet the needs of all water users.

We should learn from those successes and errors and develop our own way of transitioning. Assembly Bill 387 disregards potential consequences. The bill is a one-size-fits-all approach to a State with widely differing regions. We should take time to work toward a solution that is specific to the entire State. We urge the Committee and stakeholders to study this issue further in the Interim.

KYLE DAVIS (Nevada Mining Association):

I will submit a letter ([Exhibit L](#)) from ten stakeholder members that oppose this bill and the proposed amendment. Our association has significant concerns with the bill as we believe the DWR already has the authority to manage conflicts

between water right holders in Nevada regardless of the location of the diversion. This belief is evidenced by several recent actions by the DWR to the extent that the goal of this bill is to clarify the State Engineer's authority. Clarification may be necessary, but the language contained in A.B. 387, section 6, introduces a new concept of managing water on a source-by-source basis which could result in more work for the State Engineer.

The language in section 10 is also unclear, suggesting that any appropriation or use of groundwater is subject to all existing rights, only if the State Engineer finds a hydrologic connection sufficient to cause a conflict with existing rights. The language contains a presumption that the section would only apply in cases of conflict. Section 10 does not clearly explain how a hydrologic connection is proven and whether it is sufficient to cause a conflict with existing rights.

The Nevada Mining Association welcomes more discussion. Many other Western states have developed conjunctive management protocols that could be used in Nevada. We oppose A.B. 387 because of the uncertainty the bill could introduce to Nevada's water law. Nevada must first learn how to best manage limited water resources.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau):

We oppose A.B. 387. Our policy is to oppose the combining of established water basins. We believe that management of individual basins leads to more precise stewardship of water resources. The ability to see and measure what is happening under the ground is highly subjective. Basin boundaries are a valuable source of reference for the decision-making process. However, basin inflows and outflows can be measured and estimated. We are also concerned about using computer-generated models and broad-brush applications of data to address site-specific decisions. We also believe that if there are hydrologic connections, they may be occurring at different degrees within a basin.

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

Senate Committee on Natural Resources
May 11, 2023
Page 25

CHAIR PAZINA:

We appreciate the hard work you put in to bring stakeholders together and we look forward to continued conversations over the coming week. Hearing no public comment, the meeting is adjourned at 5:32 p.m.

RESPECTFULLY SUBMITTED:

Cherie Dittler,
Committee Secretary

APPROVED BY:

Senator Julie Pazina, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
A.B. 70	C	3	Assemblyman Howard Watts	Proposed Amendment
A.B. 70	D	5	Be-Be Adams Friends of Nevada Wildlife	Statement of support
A.B. 70	E	6	Bari Levinson / Sierra Club	Letter in support
A.B. 70	F	7	Senator Julie Pazina	Clark County Republican Party letter of opposition
A.B. 387	G	14	Senator Julie Pazina	Four letters of support
A.B. 387	H	16	Bennie Hodges	Letter of support
A.B. 387	I	17	Chris Mahannah / Churchill County	Testimony in support
A.B. 387	J	19	Jay Dixon / Flying M Ranch	Testimony in support
A.B. 387	K	23	Senator Julie Pazina	Two letters in opposition
A.B. 387	L	23	Kyle Davis / Nevada Mining Association	Letter in opposition