MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Eighty-Second Session
March 29, 2023

The Committee on Natural Resources was called to order by Chair Lesley E. Cohen at 4:02 p.m. on Wednesday, March 29, 2023, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and to Room 130, Greenhaw Technical Arts Building, Great Basin College, 1500 College Parkway, Elko, Nevada. Copies of the minutes, including the Agenda [Exhibit A], the Attendance Roster [Exhibit B], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Assemblywoman Shannon Bilbray-Axelrod (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Becky Peratt, Committee Policy Analyst
Erin Sturdivant, Committee Counsel
Connie Barlow, Committee Manager

Nancy Davis, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Laurel Saito, Nevada Water Strategy Director, The Nature Conservancy
Patrick Donnelly, Nevada State Director, Center for Biological Diversity; and Private Citizen, Shoshone, California
Kyle Roerink, Executive Director, Great Basin Water Network
Christina Erling, Vice President, Government Affairs, Nevada Gold Mines
Kyle Davis, representing Nevada Mining Association
Andrew Belanger, Director, Public Services, Southern Nevada Water Authority
J. Brin Gibson, representing Coyote Springs Investment, LLC
Jeff Fontaine, Executive Director, Central Nevada Regional Water Authority; and Executive Director, Humboldt River Basin Water Authority
Emilia Cargill, Chief Operating Officer, Senior Vice President, and General Counsel, Coyote Springs Investment
Jake Tibbitts, Manager, Natural Resources, Eureka County
Steve Walker, representing Lyon County
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Jennifer Lazovich, representing Republic Services
Karen Peterson, representing Vidler Water Company
Mike Reese, Vice Chairperson, Lincoln County Water District
Leo Drozdoff, representing Truckee Meadows Water Authority
Richard Perkins, representing Nevada Cogenerations Associates #1; and Nevada Cogenerations Associates #2
Bevan Lister, Private Citizen, Pioche, Nevada
Robert Coache, representing Water Strategy Group LLC
Adam Sullivan, P.E., State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources
Chris Mahannah, Water Resources Engineer, Churchill County; and representing Truckee-Carson Irrigation District
Edwin James, P.E., General Manager, Carson Water Subconservancy District
Will Adler, representing Pyramid Lake Paiute Tribe

Chair Cohen:
[Roll was called. Rules and protocol of the Committee were reviewed.] I will open the hearing on Assembly Bill 387.

Assembly Bill 387: Revises provisions relating to water. (BDR 48-338)

Assemblyman Howard Watts, Assembly District No. 15:
It is my pleasure to present Assembly Bill 387 for your consideration today. This is yet another bill that was recommended by the Joint Interim Standing Committee on Natural Resources and was referred to that committee by the Subcommittee on Public Lands

following comments and testimony that were brought forward during a water-focused meeting of the Subcommittee on Public Lands in Boulder City. I will speak a little bit about the genesis of the bill and how it has gotten to the place it is, and the process. I will then walk through the bill and the mockup of an amendment [Exhibit C] which should have been provided to all members and should be available on Nevada Electronic Legislative Information System. I will then be glad to stand for any questions.

One of the things that precipitated this bill coming forward was a conversation about recent court decisions that had raised uncertainty about some of the elements of water law. Some of the things that were brought into question were the use of the best available science in decision-making by the Division of Water Resources in rendering decisions related to water rights; the ability for the State Engineer to manage groundwater basins, which we generally see as separate dedicated basins with their own perennial yield, and we manage the sustainability of those basins. Increasingly, we have learned through additional science that, particularly when we go into these deeper aquifers in those basins, there are hydrologic connections between them. The law and the science are not necessarily aligned. There was concern that the statutes are unclear on the ability to manage conflicts that occur because of usage in hydrologically connected but separate groundwater basins.

The third issue is the conjunctive management of groundwater and surface water, which simply put, is something that we now know from science. We have known this for a long time, that springs are an expression of groundwater coming to the surface. Those springs can then flow into creeks and flow into rivers. There is a connection between groundwater and surface water. Also, surface water—rivers and streams—those streambeds can sink down, even though that water is flowing, and penetrate into the groundwater system that is connected to it.

While the particulars may vary depending on the geology, we know there is a connection between groundwater and surface water, but we have surface water rights, and we have groundwater rights. We have surface water law, and we have groundwater law. Generally, at least within this state, those have been seen as fairly separate things. The state has taken steps to try and recognize and address some of those issues and those conflicts as they have been demonstrated, particularly in recent times. As these things are litigated, which water policy constantly is in the state, some of those things have come into question.

What we sought to do through A.B. 387 is to provide some clarity and some guidance in how the state can and should manage those conflicts moving forward. These are very complex issues that really impact the entirety of water law and water administration in this state. These are issues that have come before the Legislature before. I have been involved in some of these debates since before I had the honor of joining this body. Those debates have often been resolved with putting some language in legislative declaration, encouraging the State Engineer to consider the best available science in rendering decisions concerning the available surface and underground sources of water in Nevada, or the Legislature declaring that the state should manage conjunctively the appropriation, use, and administration of all waters of the state, regardless of the source of the water. The reason those things made it into

legislative declaration is because we could not agree on a clear statutory framework or language for how to do those things. There was a recognition that those things are important. A legislative declaration is not the same as statutory authorization for what the state can or should do, or how they should go about doing it. Assembly Bill 387 is an attempt to try and clarify some of those issues and establish a real, true policy for the state in addressing these issues.

The overall intent of what we have tried to do is make that application as narrow as possible. First of all, with the conjunctive management of surface and groundwater, there is a little bit of this bill that potentially touches on that, but ultimately when it comes to setting some clear conjunctive management policy, it is, at this time, something that we have not been able to reach some clear consensus on with all the many stakeholders. This bill focuses on the other two concepts: the use of the best available science, which this bill, as it currently stands, seeks to address by taking the language of that legislative declaration, striking it out, and putting it in statute explicitly with "the State Engineer shall" at the beginning—taking it out of "the Legislature thinks it would be great if" to "the State Engineer shall" administer water law in this way. The bill is also seeking to provide some clarity on managing hydrologically connected groundwater basins. There have been a lot of different ideas, a lot of different proposals. There has been action taken by the state to essentially manage interconnected basins as a group. In a lot of conversations, I determined the best way to move forward in providing some of this clarity is to make it as narrow as possible.

This does not touch the organization of basins, or to potentially redraw those lines, or to designate groups of basins to be managed. It tries its best to acknowledge that because of those connections, conflicts can arise. When they do, we should manage those conflicts the same way we would if they occur within a single groundwater basin. We are trying to preserve prior appropriation, beneficial use, and all the other tenets of water law, but acknowledge that those do not just apply within a groundwater basin. There can be scenarios in which somebody in an adjoining basin, whose use might be up gradient of another user in a hydrologically connected basin and that might impair the other's standing right, in addressing those issues, we should follow the same water law process that we have if that were to occur within a single basin. That, at a high level, is what we are trying to work toward.

I have tried to reach out and share the overall goals with everyone who is interested in water policy in the state. I think you see most of them sitting behind me right now. I had a lot of conversations; I received a lot of feedback. These things are tricky. If we could have it all figured out and gotten on the same page, we would not be having this bill hearing today. There is still disagreement. I do not think we are going to reach something that everybody agrees on. My goal is to get something that addresses as many of the concerns as possible and is a step toward trying to reconcile the hydrologic realities that we face with the state's policy to make good decisions moving forward. I want to note that those conversations are ongoing.

We have a proposed mock-up [Exhibit C]. With apologies to the Chair and staff, there will be more amendments forthcoming. Probably we are not going to have this figured out; even with whatever amendment gets brought forward for a work session, these conversations are going to continue. I want to be completely up-front about that. I really appreciate everyone who has engaged in this, who believes that we need to take action toward this, even if we are not on the same page yet. It has been extremely helpful in providing feedback and suggestions to try and home this in. I feel like this is the closest that we are at this point in time.

I would like to briefly walk you through the bill and the amendment [Exhibit C]. Section 2 of the bill references groundwater basin and section 8 of the bill defines groundwater basin. Those are proposed to be removed in the amendment. I feel that starts to get into the idea of designating entire groups of basins and reshuffling the priority of them. From the conversations that I have had, I feel it is more appropriate to really focus this on identifying and resolving specific conflicts when they can be identified and demonstrated. The amendment proposes to remove those sections of the bill.

Section 3 and section 5 are what I just referenced. In section 5, we are striking out the legislative declaration related to encouraging the State Engineer to use the best available science. Section 3 takes that exact language and says the State Engineer "shall" consider the best available science and puts that into statute so that it is clear direction and authority for the State Engineer to do so.

Section 6 is where we are starting to try and include the incorporation of hydrologic connection. This is a section of law that discusses conflict with existing rights. In the original bill, there was some proposed language to be added. In the amendment, we tried to simplify that a little more. Instead of noting the existing rights of holders of permits, claimants of vested rights, et cetera, it is when there is a conflict with existing rights from any hydrologically connected surface water or groundwater, or with protectable interest in existing domestic wells. We are trying to add into the section of law a recognition that there may be a conflict with an existing user right that stems from hydrologically connected sources that may not be within the same groundwater basin.

Section 7 had some language related to basins that was being moved to section 8. We are trying to not completely redefine groundwater basins or hydrologic basins at this time. Section 8 is proposed to be deleted [page 6, Exhibit C]. Section 9 had some conforming language that would also be deleted because the changes to section 8 are going to be removed.

In section 10, subsection 2, I want to draw your attention to the language:

> All underground waters within the boundaries of the State belong to the public, and, subject to all existing rights to the use thereof as set forth in

> subsection 1, are subject to appropriation for beneficial use only under the laws of this State relating to the appropriation and use of water and not otherwise.

Section 10, subsection 1 is seeking to mirror, build upon, and clarify that by noting that any appropriation—I will say it is my intent that is not only new appropriations of water, but all appropriations of underground waters—"within the boundaries of this State" is proposed to be stricken because we have groundwater basins that cross state lines. We want to recognize that as we are looking at policy moving forward. Section 10, subsection 1 now reads: "Any appropriation of underground waters is subject to all existing rights to the use of the source thereof . . ." [page 6, Exhibit C]. I am also trying to clean up the language a little bit related to points of diversion, saying that, regardless of where the source is, any appropriation is subject to all existing rights.

Putting that into the closest thing to plain English, if you want to appropriate and use water, it is going to be subject to water law and all existing rights. If it conflicts with an existing usage or right, that has to be dealt with through our existing water law, regardless of what the source is, if they are connected. It does not matter if it is in the same basin or if they are in different basins. If there is a connection and that connection can be demonstrated, you have to deal with it the same way you would if it was within the same groundwater basin. That is what the rest of the language is, noting that if the State Engineer finds a hydrologic connection sufficient, not just a connection, but a connection sufficient to cause a conflict with those existing rights.

The next major section is section 13, subsection 3. "In determining whether there is unappropriated water in the affected area, the State Engineer shall make this finding in accordance with *Nevada Revised Statutes* (NRS) 533.370." We took some of that language out because it is duplicative of existing NRS. Basically, we are trying to create a point back to similarly saying determining if there is unappropriated water, we have got to recognize that there are some connections that may be leading to essentially some double counting. We do not want to say there may be unappropriated water when it turns out that is actually being within a hydrologic system that may already be accounted for. That would have to be demonstrated through existing processes with the State Engineer. The rest of the bill is conforming language. That concludes my presentation. Thank you for your time and consideration.

Chair Cohen:
With the understanding that you are still working on this, the concern is that if you have two rights holders, there could be conflict. Will you tell us the story of what is going to happen now if there is conflict?

Assemblyman Watts:
This is tough. Water is scientifically very complex and every region, every basin, has its own quirks. The difficulty is trying to reconcile that very specific science with also having a policy, particularly at a statewide level, that provides a framework for how these matters are

handled and provides some degree of certainty to folks. At a very high level, that is one of the things we are struggling with: trying to have some clarity and certainty in policy. If the policy is too broad and provides too much flexibility, it creates tremendous uncertainty. While the waters belong to the people of the state and are managed, the rights to use those waters are a type of property right, and they have value to those who hold them. Without getting into an extremely specific case, that is the struggle we are going through, trying to balance that, but also recognizing that you can have something on paper, but if it does not align with the science, it is going to create a lot of problems. We are in the driest state in the nation in terms of precipitation, and we are trying to come up with a framework that ensures we manage these resources in the best way possible.

To answer your question a little more specifically, here is the rub with the policy: in situations where conflicts occur, for the most part, we are looking at a zero-sum game. There are going to be winners and there are going to be losers. This is one of the big issues with conjunctive management policy. If a surface water right is being impaired, in general those are all senior to groundwater rights, you have two options. One is to create some sort of mechanism to assist the groundwater user, which basically is fiddling with the foundations of water law. Or you have to curtail the use of the groundwater that is impairing the surface water. That has value to that person; that is their livelihood. When you are looking at a situation where the science says somebody has to lose, it is a really tough issue. At a high level, that is what we are dealing with.

I have tried to do my best to take the most narrow and focused approach as possible. For example, with combining basins—which has been proposed, and we did not get very far down the line on some of those processes—essentially, you are taking basin A, that has a set of water rights users and priority dates, and basin B that has the same. If you combine them, because of the hydrological connection, now all those priority dates get intermingled and folks who felt fairly confident in their rights before are maybe less so now. Instead of doing that, what we are really trying to focus on is to identify and demonstrate a conflict in which this right or this usage is going to impair another, and then handle that the same way you would handle it in an existing basin. We have a very robust framework for handling that if it is in the same groundwater basin. Once we start to get into these areas of hydrological connection, our statutes are less clear. I hope that provides some clarity.

Chair Cohen:
Thank you for that.

Assemblyman DeLong:
I was reading these edits while you did the presentation, and hopefully I have caught them all. I think this deals with an issue that you brought up, the super basin concept, which I do not think is ready for prime time given a number of issues, particularly a takings issue. I think that makes a lot of sense. The way you described the potential conflicts—which primarily in my mind is going to be existing surface water rights versus a junior groundwater right—the way that is likely going to be demonstrated is through models, which gets to the best available science language you have put in. I would hope that in the additional

discussions you have that the term "best available science" is actually fleshed out such that we are not creating this broad term that is subject to interpretation by State Engineers as they go forward, that we as legislators established that policy.

Assemblyman Watts:
Thank you for that concern; I appreciate that. I do think that best available science is one of the main areas that continued discussions are happening around. I and some of those behind me have all tried to define terms when it comes to water law—it is really tricky. The situations can vary so much between basin to basin and region to region. I do understand some of the questions around the following: How does that get defined? How does that get sorted out? Environmental soundness is in state statute and is not defined. There have been a lot of conversations and debates about how you define terms. I want to acknowledge that those conversations are ongoing, and I do understand that, but when you try to define them, it also gets very tricky. When we looked at the proposed definition for groundwater basins, I did not want to go down that path. I am not saying no, but I appreciate that concern. That is definitely one of the things we are going to continue to talk about, but also acknowledge the challenges when it comes to some of those things.

Assemblyman DeLong:
The one thing I would add that I touched on, and that is moving forward with this concept of the potential for takings claims is something we all need to keep in mind. That is a tough one.

Assemblyman Watts:
It is tough; we have to manage all the waters as a public resource. If we are in a situation where we are not sustainable, everyone loses. This is the tricky thing about water rights. While folks feel very certain in their senior rights—first of all, senior rights also have to be put to beneficial use. There are multiple aspects to water law besides the date attached to them. That water has to be put to beneficial use on an ongoing basis. We already have a general foundation, and if there is a conflict, or it turns out we goofed it—because if we do it right, we should only give out rights to water that can be sustainably used. There have been some quirks and some missteps along the way. Curtailment and other things are the backstop, particularly with surface water, which can be quite variable in its supply. If the water is not there, then we start cutting off those who are junior. The water right is only guaranteed up to a point. The perspective I am bringing forward is we need to have a holistic approach to viewing that and not pretend that does not apply if there is a surface groundwater connection.

To your other point, I do think there is also the potential for conflicts to arise between hydrologically connected groundwater basins as well. The idea is that you would go back to some of those same things as we discussed with surface water seniority and other things. That is how you start to manage a conflict if it can be demonstrated between two uses in separate groundwater basins, if it is demonstrated that there is a hydrological connection. I mentioned there have been court decisions and there are folks here who have a stake in some of those decisions. This is not aimed at influencing the outcome of a court decision.

It is not even aimed at a specific region. It is recognizing some of these things that I feel have been brought up as very valid points and in need of clarification in our law so that we have a better understanding of how the state and different stakeholders proceed in addressing these issues moving forward.

Assemblyman DeLong:
I would like to follow up on some of the things you just said about potential conflicts between basins that have been interpreted to be hydrologically connected. Based on these amendments, do you think that that is something the State Engineer could implement?

Assemblyman Watts:
Yes, that is the intent.

Chair Cohen:
I appreciate that you are acknowledging to us that this is a big problem, and there is not an easy solution. You are not saying, It is going to be great, we are fine, there is no problem, we will connect the basins and we will all be great. I have a question, but I think it is more for legal counsel. If we end up with rights holders in conflict, will we end up with an eminent domain case? How will that proceed, when we talk about having winners and losers and moving forward with someone ending up getting the right and being able to use the water versus someone who now becomes a more junior user, or because it is the state's water, they lose the right, and that is it?

Erin Sturdivant, Committee Counsel:
That is a question that I am not sure I can answer in a broad sense. My understanding of the bill is that it is prospectively amending the statute to require the State Engineer to consider best available science going forward. All water permits are subject to existing rights already, and you are not guaranteed that water if there is no water. We believe it is spatially defensible from the perspective of takings and domain, but obviously we cannot predict what could happen.

Assemblywoman La Rue Hatch:
I think we all agree that water is our most precious resource, and it is diminishing thanks to climate change and everything else. I think it is essential that we are updating our statutes, some of which have been around since the very beginning, to recognize the modern science and modern issues that are going on. I really like your statement, if we do not manage this properly, we all lose out. We need to make sure we are protecting it for everyone. My question is on these hydrologically connected basins. Do you know how large some of them can extend, or how many basins we know are hydrologically connected based on what we have discovered?

Assemblyman Watts:
I do not think we fully know the extent of those things. There is ongoing modeling and other science seeking to demonstrate and prove out some of those things. In some of the work I have done in the past—I should say I have been involved; I am not a hydrologist. I have

worked with organizations that have done hydrology looking at interconnections between multiple basins—I do not remember the exact number, but it was less than ten and more than three basins in eastern Nevada, including basins that actually straddle the Nevada-Utah border. One of the big issues that came up was the designation of a super basin in the Apex area, and a few basins were combined. One of the things that has been a major issue is what is known as the Lower White River Flow System, which is in southern Nevada. Depending on who you ask, this involves five or six groundwater basins. I am doing this all off of recollection, so if I speak in error, if I am off by one or two, please forgive me. There has been a demonstration of connection across those different basins.

To complicate matters even further, there is also a discharge of surface water expressing itself into Muddy Springs. Muddy Springs supplies the Muddy River; the Muddy River flows into the Colorado River. There are endangered species involved. It is a very complex system where all of these things are at play. Sometimes we are talking about surface water and groundwater. Sometimes we are talking about interconnected groundwater basins primarily. Lower White River Flow System gives you all of those things. Those are a couple of examples. You will probably hear from some folks that the science is still ongoing. Some people disagree with some of the models and findings that have been put out there so far. It is hard to give a definitive answer.

Assemblywoman Hansen:
In regard to the best available science and rendering decisions, who is going to determine the "best available science"? If we thought prior appropriations was controversial or maybe a sticky wicket at times, I think trying to determine who is deciding best available science could get us in that same kind of trouble.

Assemblyman Watts:
As it stands in this current draft, the State Engineer shall consider. The different stakeholders and participants in any proceeding before the Office of the State Engineer will provide science. The State Engineer may look at what else is out there that is already public domain and has been provided. All of that is taken into consideration, and to make it really simple, the State Engineer would decide. I want to note that if it is contentious, which most water issues are, it is going to be litigated. The State Engineer will decide it first, then a judicial court will decide, and potentially the Supreme Court will decide. Maybe things will get remanded back to the State Engineer. I am sure they are very familiar with some of these processes that go around and around. The State Engineer would be the first entity to make that decision. Everyone will be able to plead their case, and then there is judicial review of all those decisions. That is how I envision those things being discussed and sorted out.

Assemblywoman La Rue Hatch:
There are obviously a lot of questions about "best available science." I know the State Engineer is here, so you can phone a friend if you need to. Can you speak to what he is using when you say he is referring to the science? Does he have scientists on staff? Is he doing a quick Google search? What is he doing when he is looking into the science?

Assemblyman Watts:
I do not think I need to phone a friend quite yet. I am sure the State Engineer will come up probably in neutral to be able to provide some additional clarification and maybe answer additional questions. I think it is a whole range of things. Assemblyman DeLong referenced models. That involves taking certain data points, drilling wells, doing some pumping, and trying to determine what impacts there might be. It is also doing water chemistry analysis to try and understand where water may be flowing and what some of those connections may be. There can be water level monitoring, pump tests, and applying a model to that to try and understand things at a higher level.

I will say, for some of the folks who do not follow these things closely, the baseline science that determined the yield for a basin was done by the U.S. Geological Survey; they were called recon studies, and they happened about 50 years ago. That is what we are going on. It is also important to understand how some of the science of accessing water has changed, as well as the science of understanding it. At first, we had the water that you could see, and we would divert off of that in order to meet the needs. Then we were able to start harnessing groundwater. Our basins are developed based on topographic maps. We have all the mountainous regions and valleys, and we are able to look at that and see, here is where water would come down from and here is the bowl where it sits. That works well for shallower aquifers known as basin fill. Then we found out there are also deeper aquifers. Some of that water is filtering down; some of that water is thousands of years old. That is when it really gets zany because the geology does not necessarily mirror what is going on in that topography. I hope that somewhat answers your question about some of the science and some of the complexity involved.

Assemblywoman La Rue Hatch:
To confirm, they are actually going out into the field and confirming these things. They are not just relying on information provided by others. Is that correct?

Assemblyman Watts:
There can be different models developed, but there have to be inputs into that, and those inputs have to be gathered in the field. There is a mix of data points from in the field and figuring out different interpretations of that data and what it means. There are efforts underway to update some of the baseline science that we use within the state to make some of those decisions, and potentially updating some of that science on its own could have impacts to the current water rights.

Assemblywoman Hansen:
It is not like there is a bunch of angst in section 3, but why do we feel we have to say "shall consider the best available science"? Was the State Engineer not considering the best available science before? I am wondering what the need is to put that in statute.

Assemblyman Watts:
I think there are two parts to your question. One is why even have that and what would the alternative be? That is one of the reasons why I wanted to address this. Because if it is not

clear that the state should be making decisions based on science, I am extremely concerned about what the alternative is. I am a political science major; I want decisions to be based on actual sciences, not political sciences. Folks who have a lot of financial resources can pay for lots of modeling and things to try and demonstrate a point. That is a factor of concern in figuring out, is the best available science whoever has the most money? On the flip side, if we are not making decisions based on science, is that whoever has the most money or the most connections? That is why I think it is important to have this really clear as to why we are moving this around and having that be part of the debate.

There was a court decision that said, that is legislative declaration; that is not statute. There is nothing in *Nevada Revised Statutes* that says what the state shall do, or is authorized to do, or anything about using science. There is a court case that is being appealed, but it says, legislative declaration is not statute. There is nothing that says that the State Engineer should make decisions based on the best science. That is what led lead me to explore options to make that a little bit clearer.

Chair Cohen:
Just to be clear, we should not put this all on Assemblyman Watts. This came out of the Joint Interim Standing Committee on Natural Resources. That interim committee met and studied this issue, and this was the terminology that the interim committee decided was appropriate to use.

Assemblywoman Hansen:
A lot has transpired since then. I understand what you are saying, that things can be political in modeling, but also so can science. We have lived through that in the last few years, that science can be manipulated or politicized. I agree, we need to base things on science. Unfortunately, even science has become political. It is not a guarantee that we are going to get the best science. I guess that is the nature of the beast of the days that we live in. I appreciate what you are trying to get to. I appreciate what we tried to study in the interim, and I know you are trying to get to a solution. I will be quiet so we can hear from all those who have a lot to enlighten us with.

Chair Cohen:
Seeing no other questions, we are ready to move on to support. I will start in Carson City.

Laurel Saito, Nevada Water Strategy Director, The Nature Conservancy:
We thank Assemblyman Watts for working with many people to bring this bill forward and for working on this complex but important topic. We are speaking in support of this bill. Nevada's groundwater aquifers provide drinking water and economic benefits for people and also support groundwater-dependent ecosystems that rely on groundwater to maintain their ecological structure and function. Most of Nevada's rivers are groundwater-dependent, originating as springs or groundwater seeps with additional inputs and groundwater along their length. Because of this connectivity of groundwater to surface water, it is possible for groundwater use in one hydrographic area, or administrative groundwater unit, to affect surface water flows in another hydrographic area. Assembly Bill 387 addresses this

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 impact existing water rights or be detrimental to the public interest in another hydrographic area. The bill also obligates the State Engineer to consider the best available science and water decisions in the state.

These changes will enable the State Engineer to make science-informed 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, and we are ready to work with him and other stakeholders on the bill to make it more effective. [A letter was also provided Exhibit D.]

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

Patrick Donnelly, Nevada State Director, Center for Biological Diversity:
Following the rules of this Committee, we optimistically oppose this bill. We support the intent of this bill. We have been working diligently with stakeholders on finding something that is workable for everybody. We are not there yet. There is still wordsmithing to be done, but I would say the group is well on its way. The bill that you have in front of you and the amendment [Exhibit C] are the result of unprecedented collaboration. Pitched battles have been fought in this building over this very topic in previous sessions, including 2017 and 2019. However, we are in a very different place now. Assemblyman Watts has provided a vehicle for this collaboration and a diverse group of interests has been working diligently to find something that will work. It is very different from previous, quite adversarial encounters around this topic. There is a desire to continue moving forward and to keep working on the bill. I will say this is not about a single case or a single place. I think the case has helped illuminate where there is a need for clarification. Our stance is the language we see in front of us right now is clarification of existing authorities. These authorities do exist and have been a part of the practice of Nevada water law, but there is a question as to whether those authorities are readily available. The intent of this bill, as I understand it, is to clarify those authorities rather than doing a dramatic rewrite of Nevada water law. If we do get there, if this bill does pass, it really will be a breakthrough moment, I think, in the evolution of Nevada water law because it will be a chance for many stakeholders to come together and say this modest clarification, this modest change, is acceptable, which has generally been a blocked point in the past. I will finally add, this bill is not just for the benefit of the environment—there will be lots of winners and losers as this type of thing gets implemented. We will not be winning all the time, but it is moving towards science-based management of water.

Kyle Roerink, Executive Director, Great Basin Water Network:
We are in a similar situation as Mr. Donnelly. We oppose the bill, but we support a lot of what is inside it. We want to thank Assemblyman Watts for his work on this and we are grateful to the Committee for giving us an opportunity to speak here today. Water knows no

borders. There are lines on maps and then there are hydraulic realities. I think what we are trying to address in this bill are the hydraulic realities of how water flows through basins. These lines on basins were drawn up 50 years ago. Now we know a little bit more, and we know how the water moves. We are here to address conflicts and to try and limit conflicts in the future. I think giving us a shot at doing this, continuing the wordsmithing, will be really valuable for the long run in the state's management. As it relates to the issue of the best available science, I think everybody is always going to be suing each other over that. I have seen United States Geological Survey models with a plus or minus 35 percent margin of error, and that is the gold standard. There is always going to be a fight about what is happening underground. These are strange mosaics that we cannot see. This all comes back to clarity, and that is what we are advocating for in this.

Christina Erling, Vice President, Government Affairs, Nevada Gold Mines:
We appreciate the opportunity to come before the Committee and appreciate the work of Assemblyman Watts on the issue of conjunctive water management. As the bill is currently written, Nevada Gold Mines is in opposition to A.B. 387. However, we stand ready to continue working with the Committee on this issue. We are willing to support the concept of conjunctive management if it is properly implemented. The legal distinction between separate management of groundwater versus surface water has been applied for over a century. This means that a wholesale revision to Nevada water law on this distinction must be done carefully to avoid harming the state's economy and creating unconstitutional taking.

Assembly Bill 387 currently does not contemplate which party bears the burden of proof for demonstrating the existence of conflicts between water right permit holders or how the State Engineer is expected to arrive at best available science. Additionally, existing elements of Nevada water law, including the limitations on the definition of beneficial use, mean the State Engineer will be limited in the implementation of conjunctive management in such a way as to cause unnecessary harm.

Other states have implemented conjunctive management with some success, but only because they worked for many years to understand the issues for their particular water basins and designed the state laws to include alternative measures to meet the needs of all water users, including voluntary conservation, aquifer recharge, and water banking systems, to name a few. Only then, with the proper tools developed, can conjunctive management be implemented without harming water users or the state's economy. Nevada lacks these tools, and this bill does not address the shortcoming which leaves the State Engineer with curtailment as a primary tool. Assembly Bill 387 as it stands is a one-size-fits-all approach to a state with hydrographic basins that differ widely. We encourage the Committee to take a step back and continue the conversation with stakeholders on this important concept. The success of this effort depends on careful design and implementation of the laws and regulations. Thank you.

Kyle Davis, representing Nevada Mining Association:
We appreciate all the work that has gone into this from Assemblyman Watts, from the Joint Interim Standing Committee on Natural Resources, and many people in this room who have

been working on this, both before the session started and throughout the session right up until yesterday, and will continue to work on it. We appreciate that we have been a part of many of these conversations and appreciate that we will hopefully be able to continue these conversations and get somewhere that is productive for the state. As so often is the case with water law in Nevada, just as you think you have solved one problem, you realize that you potentially are creating a new problem that you need to deal with. That is why these things are so complicated to figure out. Nevada Mining Association supports the comments that you have just heard from Ms. Erling dealing with Nevada Gold Mines and many of the points that were raised, but we look forward to continuing to work with Assemblyman Watts and everybody in this room to address these challenges.

Andrew Belanger, Director, Public Services, Southern Nevada Water Authority:
We support A.B. 387 and want this Legislature to do the hard work to pass this bill this session. We recognize it is not there yet, and we know there is more time that is needed in order to move it forward. I can tell you, having been here when the best available science language was put into the statute in this very room nearly 20 years ago, clarity is key. Make the laws clear. It lets everyone know what the rules are so that everyone knows what we are doing. What we have done over the last 20 years are half measures, sometimes, and compromises that have made it hard for courts to understand what the Legislature wants to do. Best available science has been the standard that the State Engineer thought he was doing for the last 20 years. If you want to know how he is going to implement it, it is going to be similar to what he has done for the last 20 years. It is time to make it have the force of law. It is time to make sure that we understand what a basin is, whether we can manage hydrologically connected basins together or apart. If they are hydrologically connected, make sure the law says that. Make sure it says it, because if the science is there, the law needs to reflect the science. Otherwise, you are going to get into a situation where the law is not going to keep up with it. I recognize we are not there yet. I know there is more to do, but we appreciate Assemblyman Watts' work on this issue. It needs to get done and it needs to get done this session.

J. Brin Gibson, representing Coyote Springs Investment, LLC:
We are here in opposition to the bill. Even as we understand and appreciate the intent behind the bill, candidly, our basins in Nevada are overappropriated. We simply do not and will not have enough water to satisfy everybody's needs today or tomorrow. We get that, and our client gets that. The problem is that the cure of the bill does not actually solve the pressing problems that it upends, over 100 years of well-settled Nevada water law, adding tremendous legal uncertainty on top of an existing resource uncertainty. Changing long-standing rules will not ease our water problems or fix the issue of overappropriated basins; it will merely reallocate winners while breaking bedrock law. First in time means first in right. This has been a hallmark of western water law. This is the rule of priority. This bill will radically reshuffle the line; it will not shorten the line. On the contrary, decades of settled expectations will be upset in a moment, and planning for the future when we need solid planning more than anything will be even harder. How can anyone negotiate going forward if they are

worried about the rules constantly changing? As the sponsor of the bill mentioned, there is ongoing litigation. I would note that for the record, and I thank you for your time. I look forward to working with all of you and the bill sponsor to tackle these difficult issues.

Chair Cohen:
I do have to say, I do not think the rules changing once in 100 years or so is the rules constantly changing. I think we have a job to do, and it is something for us to consider. I appreciate your testimony, but I do not think there are any other laws in this building that have not been changed in the last 100 years. It is something that we are going to consider and move forward with and do what we think is best for the state. When I say move forward, that was not me saying that this bill is necessarily moving forward. That was me saying we are moving forward with the process.

Jeff Fontaine, Executive Director, Central Nevada Regional Water Authority; and Executive Director, Humboldt River Basin Water Authority:
Like the others, we appreciate the Committee's interest and Assemblyman Watts' leadership on A.B. 387. We have been participating in the ongoing discussions with other stakeholders. In keeping with the Chair's rules and protocol, we are testifying in opposition to the bill and the conceptual amendment [Exhibit C] as presented. The amendment certainly gets us a lot closer to agreement, but as has been discussed here this afternoon, Nevada water law is very complex and essentially any change can have a significant impact and also an unintended consequence. Assembly Bill 387 presents some pretty unique challenges in terms of understanding how those impacts in predicting consequences as it relates to at least our priorities of protecting water rights and rural water interests. We support the consideration of hydrologically connected surface water and groundwater and managing the waters of this state; also, the use of best available science, as has been discussed here as well. Best available science is sort of a difficult term to define. I can tell you that at least from what I have researched, there are some basic standards and parameters that we think would have merit in getting us to a better understanding of what that means, and also, more importantly, to avoid future disagreements and litigation. We are committed to advancing good water policy for Nevada and certainly committed to working with Assemblyman Watts and others on this bill.

Emilia Cargill, Chief Operating Officer, Senior Vice President, and General Counsel, Coyote Springs Investment:
This is a five-point summary of the letter that we previously submitted [Exhibit E]. One, existing statutory structure: In 1968 the State Engineer and the government indexed 232 hydrographic basins in Nevada. Since then, the Legislature has addressed water usage on a basin-by-basin basis. Assembly Bill 387 gives the State Engineer the authority to ignore basin-by-basin management that it has been implementing for the past 50 years. There are thousands of water right holders who have relied on the basin-by-basin process and adherence to the prior appropriation doctrine of first in time, first in right.

Two, history and justifiable reliance: Under the current statutory scheme, no water right holder would expect that his water rights would be curtailed in favor of a water right holder in a different hydrographic basin. Assembly Bill 387 would reject decades of water holders' rights, expectations, and entitlements, and in effect does so retroactively. Nevada water law statutes are based on prior appropriation and A.B. 387 obliterates prior appropriation.

Three, Coyote Springs: Coyote Springs' master plan involvement in southern Nevada is a perfect example of the injustice in A.B. 387. Reliant on its senior water rights in Basin No. 210, Coyote Springs has spent in excess of $300 million installing infrastructure wells, water treatment, and sewer treatment. It did so relying on the law.

Four, the term "basin": Assembly Bill 387 redefines the term "basin" and we support the strike of section 8 from the amended bill [page 6, Exhibit C] because we believe that was overbroad. Also, the procedure by which the State Engineer determines the hydrologic connection is neither defined or described and we are concerned it will be a fodder for future litigation.

Five, the victims of A.B. 387: Assembly Bill 387 is an attempt to get legislative permission to do what the Legislature and Judiciary have previously prohibited. The victims of A.B. 387 are the Nevada companies, farmers, ranchers, and individuals who purchased water rights with a good faith belief that this legislative body would not take from them that which they have already paid for in beneficial use.

Jake Tibbitts, Manager, Natural Resources, Eureka County:
As various interests started discussing and making proposals under the bill draft request that became this bill, Eureka County held that we should wait for clarity from the Supreme Court on many of the matters of this bill currently in front of the court so we can collectively be more focused and surgical in any legislation. However, we recognize that others do not believe the same, and we have in good faith been part of the process to find common ground or a spot where we would not oppose. We believe a lot of progress has been made and the conversations have been productive. Assembly Bill 387 is very improved from some of the previous proposals that we have seen, specifically with the amendment. Some of the outstanding points we are committed to continue to work through, and you have heard on some of those, but we wish to see "best available science" better boxed in and clear on what it means. We will note that there is a change in the language from the current declaration in the statute by removing the term "availability," and we are trying to weigh what that may mean moving forward. We agree that the State Engineer should recognize hydraulically connected waters, but only to address clearly identifiable or demonstrated conflicts. We remain concerned with how priority of rights would be addressed without first identifying conflicts with some reasonable certainty. We remain committed to work with the bill proponents and other interests as we move forward.

Steve Walker, representing Lyon County:
Lyon County was opposed to the bill as written, but with the removal of section 8 in the amendment [Exhibit C], their position, like the existing bill, is quite dynamic. By the way, as

an old guy who has worked extensively in Nevada water issues, the 50-year-old document frequently referenced today, called the Reconnaissance Series Reports, was actually quite good.

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:
I want to also start out by expressing my appreciation for being able to be part of the collaboration that has been going on in developing this bill, working with Assemblyman Watts, the State Engineer, and my fellow collaborators. Nevada Farm Bureau is opposed to A.B. 387. Nevada Farm Bureau policy states we oppose the combining of established water basins and believe that management of individual basins leads to a more precise stewardship of water resources. The ability to see and measure what is happening under the ground is highly subjective. We see that basins are valuable as boundary references for decision making. Inflows to a basin can be measured and are estimated; outflows from a basin can be measured and are estimated. The science applies to the basin and allocations approved based on that basin is science. We are also concerned about using computer-generated models and broad-brush applications of data to address site-specific decisions. Our contention is if there are connections, there may be different degrees and they may not be happening in all of the locations within that basin. Thank you for your consideration.

Jennifer Lazovich, representing Republic Services:
Republic Services owns the Apex landfill in southern Nevada, which is where all the solid waste goes from our franchise's solid waste in Henderson, City of Las Vegas, and Clark County. We have water rights to operate that landfill. It is critical, and we are in current active litigation on issues that are raised in this bill with the State Engineer. That litigation has now been appealed by the State Engineer's Office. For those reasons, we remain opposed to the bill.

Karen Peterson, representing Vidler Water Company:
I have represented Vidler Water Company for many years on water right matters in Nevada. Vidler has groundwater rights and surface water rights in northern Nevada and in southern Nevada. Vidler is opposed to A.B. 387 for the many reasons set forth in Ms. Timian-Palmer's letter sent to the Committee [Exhibit F]. I just saw the mock-up [Exhibit C] today during the hearing, and I am trying to adapt some of my comments to that. We still have concerns about section 10. I heard Assemblyman Watts say that the intent of section 10 would be to connect basins that were hydrologically connected. We have a concern about that because that is exactly what happened in southern Nevada, and Vidler was part of that group. Vidler and Lincoln County Water District own water rights in Kane Springs. The State Engineer broadly stated that there was a hydrologic connection between seven basins. At the end, he broadly stated that there were conflicts and made decisions, supposedly based on the best available science, that eliminated 38,000 acre-feet of water from being pumped. That is the concern, that this language is maybe still too loose and those kinds of decisions could still be made. A past State Engineer order showed two different State Engineers can have very different views of "hydraulic connection" and can have very different views of "complex," thus how those terms may be interpreted under A.B. 387 create more uncertainty.

Under sections 3 and 10, the State Engineer can define a water resource by hydraulic connection using the undefined term "best available science" and allow pumping that is causing impacts to continue as an "existing right," another word used in the statute, and require junior rights not causing impacts to stop pumping. There does not appear to have been any analysis of the impact of A.B. 387 on other sections of Nevada water law. Under existing water law, the State Engineer cannot curtail pumping in Kane Springs. There are no water right issues or water source problems with Kane Springs. Under A.B. 387, if you can still connect basins, he can take action to curtail water rights in Kane Springs when he cannot do that now, under existing law, because there are not any problems in Kane Springs. I will submit the rest of my comments in writing [Exhibit G].

Mike Reese, Vice Chairperson, Lincoln County Water District:
I am here in opposition of A.B. 387. I will be the first one to say ditto. We have heard a lot of testimony and we are nodding our head yes. Our big concern is the priority. A lot of people have invested a lot of money and stuff into planned communities, based on their senior water rights and that now is in jeopardy, and that is part of the detriment of the bill as it sits right now. I do not know that you can clean that up or not, but as of right now, we are strongly opposed to A.B. 387.

Leo Drozdoff, representing Truckee Meadows Water Authority:
I am going to focus my comments from Truckee Meadows Water Authority. We do extend our thanks to the interim committee and Assemblyman Watts for what many have described to be true, which is the unprecedented amount of communication and working collaboratively. We still feel that the bill and its amendment fall short when it comes to process and due process. I think these are very weighty issues and the ability to rely on something in statute, whether it was a hearing or something else that people with water rights would have the knowledge that there would be a place to bring their concerns and it would be tight and rigorous, is still probably an area of the bill and the amendment that we think needs work. We will continue to work with the many stakeholders and appreciate your time.

Richard Perkins, representing Nevada Cogenerations Associates #1; and Nevada Cogenerations Associates #2:
We have had a number of conversations with Assemblyman Watts and other stakeholders, and to echo what Mr. Drozdoff said; we continue to want to work through these issues. I think you would have to have been asleep for the last 30 years to not understand that we are in a water crisis throughout the state and need to find some solutions. We have overappropriated basins. We have all sorts of other challenges, in spite of the weather over the last few months that has brought us the precipitation that we have so sorely needed. We are looking forward to working with all the stakeholders and following the leadership of Assemblyman Watts to find the solutions.

Chair Cohen:
I will now go to Las Vegas for those in opposition.

Bevan Lister, Private Citizen, Pioche, Nevada:
I am representing myself, and that is really important because I am nobody. For background, I am a farmer by choice. I use water. I am an engineer by training. I know a little bit about water systems. I am a water well contractor and licensed driller in the state of Nevada. I deal with water on a firsthand basis every day. I own water rights and manage water in two counties and two separate basins here in the state of Nevada. I stand in opposition to A.B. 387. First, I am not sure what we are trying to accomplish. If the purpose of the bill is to make water law less functional, open the State Engineer to more lawsuits to lose, and diminish the value and certainty of held water rights, then this bill would be a success. If the purpose is to give direction to the $5 phrase, "conjunctive management," then the offering of more subjective or undefinable terms is simply just a sidestep and serves no justice in addressing the questions surrounding the $5 term.

Nevada has a simple and powerful system of water allocation, using the principle of prior appropriation. The Office of the State Engineer is tasked with administering the allocation of that water under the law. It is unfortunate that for some time, that office has been unable or unwilling to create the necessary record to support the actions that they take. The best available science is always site-specific. We have long trusted and assumed that the State Engineer is using the best knowledge of water and systems to set a perennial yield for each basin and allocating accordingly. The concept of connections between sources has always been a point of interest in the setting of perennial yields. The science needs to be documented to substantiate the decision. Let us not change the law with nebulous terms that lead to more litigation. You cannot ever write enough laws to avoid all conflicts. That is why we have a court system, and that court system needs laws that it can stand on, not lose its balance over. Thank you very much.

Chair Cohen:
Seeing no one else in opposition in Las Vegas or Elko, is there anyone on the phone?

Robert Coache, representing Water Strategy Group LLC:
I have been doing water rights administration and filing for water rights for about 40 years. I would like to thank Assemblyman Watts for the effort that he has put into this and how open his office has been to all of us. He is finally trying to do something, and I really appreciate that instead of kicking the can down the road for 20-plus years on this. I agree one hundred percent with what Mr. Belanger said. I want to piggyback on that. While we are in opposition to the bill, we still have a few sticking points and stuff. I fully support the definition of what they are doing with the best available science. I was with the State Engineer's Office for 30-plus years. Regardless of what you heard, I have never seen a time where we did not try to use the best available science.

Best available science can be anything. We talked about models, but it also talks about actual data, which is even better than best available science. All water rights that have been issued are subject to existing rights, and we have 60 years of water rights that were issued before the basins were created. They deserve to be protected. There is hydrologic connectivity; just because we have a basin boundary drawn on the map does not mean that

sources are not connected. They have to be regulated and protect existing rights, which are often senior rights. We really oppose anything being done about waiting for the Supreme Court to make the decision. I think every legislator in the building will recognize that it is their job to make the law. I appreciate Assemblyman Watts moving forward with that and look forward to working with him in the future.

[Also provided but not discussed is Exhibit H.]

Chair Cohen:
Is there anyone else on the phone in opposition? Hearing no one, I will go to those in neutral in Carson City.

Adam Sullivan, P.E., State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
I am testifying neutral on this bill. This bill, along with the amendment [Exhibit C] that was introduced by Assemblyman Watts, adds clarity in water law in a way that we believe is consistent with what water law already directs the State Engineer to do. There is some ambiguity, and this is an opportunity to clear that up. I think it is very much consistent and protective of the prior appropriation doctrine. I also believe that it helps align water law with the hydrologic science. This is essential for realistically protecting water security into the future for our dry state.

Chris Mahannah, Water Resources Engineer, Churchill County; and representing Truckee-Carson Irrigation District:
I am a licensed civil engineer and water right surveyor, practicing in the state for 37 years. I have been involved in legislative committee meetings with the Division of Water Resources and Central Nevada Regional Water Authority on this bill. We appreciate Assemblyman Watts' efforts on this. It is sorely needed. I echo what the State Engineer just said. We are testifying neutral on behalf of Churchill County and the Truckee-Carson Irrigation District, which are large water users on the bottom end of the Truckee River and Carson River. I will not take any more of your time. I have submitted detailed written comments [Exhibit I].

Edwin James, P.E., General Manager, Carson Water Subconservancy District:
We have not taken any position on this bill. We do hope that the State Engineer uses the best science and not the old science, but we understand the conflicts and issues with it. We are willing to work forward to continue to try to resolve these issues to protect our resources.

Will Adler, representing Pyramid Lake Paiute Tribe:
I would like to ditto the comments by Mr. James. We would like to thank Assemblyman Watts for bringing this bill forward. Water law is complex and has a lot of issues. Pyramid Lake Paiute Tribe was opposed to Assembly Bill 387, but the amended version of the bill has a correction to section 6 and section 13 and has brought Pyramid Lake Paiute Tribe into neutral at this time. Thank you very much.

Chair Cohen:
Seeing no one in Las Vegas or Elko, is there anyone on the phone in neutral? Hearing no one, Assemblyman Watts, would you like to make closing remarks?

Assemblyman Watts:
I really appreciate all the testimony that was provided today. I also appreciate how many people have acknowledged that there are some issues that are in need of clarity and have really worked in good faith to try and get something done. I am committed to keep working to try and get us to that place. I do feel it is important. I really appreciate all those who have been involved in providing constructive feedback, and I sincerely hope we get to that place.

I do just want to note a couple of things based on some of the testimony that came up. You heard concerns about impacts to priority, but you also heard other folks say that this upholds priority. I want to reiterate from my perspective that this is not meant to throw out priority, beneficial use, or any of the other core tenets of water law. I hear some of the concerns as well. I know that throughout NRS we have many references to the hearing process the State Engineer goes through; anytime there is a conversation about a proposal, we want to make sure that it goes through the same transparent hearing process and that there is judicial review. I want to make clear on the record that the goal of this and the intent of this is to add clarity and not have anything take place outside of those processes. This is providing some clarity to the boundaries with which the State Engineer goes through their decision-making processes. All of this would have to go through hearings that have all the notice requirements that are in place. All of those decisions would be subject to judicial review. I want to make that extremely clear for the record.

Finally, I understand the concerns that are brought up by folks who are involved in litigation. I want to say that while some of the points that were raised in recent court decisions brought up the importance of looking back at our statutes and looking back at, frankly, some of the compromises that we have made because we could not reach an agreement on anything before—and having a conversation, reevaluating that, and making sure that we have a strong framework, I feel that it is our responsibility to not delegate all of these decisions to courts to interpret. We need to provide, as a Legislature, a policy foundation, knowing full well that in these contentious issues, they are going to be litigated as well. It is our responsibility to provide a framework for how decisions go through that process. If we wait until all litigation on a water law topic is resolved before we try and address it in this body, we will never do anything on water law ever again, in my opinion. Thank you all for your time and consideration. Thanks for everyone that has been involved in the process.

Chair Cohen:
With that, I will close the hearing on Assembly Bill 387. I will now open the hearing on Assembly Bill 191.

Assembly Bill 191: Revises provisions relating to water conservation. (BDR 48-697)

Assemblyman Rich DeLong, Assembly District No. 26:
I am here today to introduce Assembly Bill 191. I have submitted a friendly amendment to the Committee which you should have and has been posted on the Nevada Electronic Legislative Information System. I will be presenting based on that amendment [Exhibit J]. The bill in general seeks to provide regulatory relief to very small municipal and quasi-municipal water suppliers.

I would like to start with a little bit of background information. Currently as outlined in the *Nevada Revised Statutes* (NRS) 540.121 through NRS 540.151, a supplier of water is required to develop and maintain a plan for water conservation. That plan includes provisions relating to the following: methods of public education to increase awareness of the limited water supply in the state; encourage reduction in the size of lawns; the need for the use of arid and semiarid plants; identify specific conservation measures to meet the needs of the service area; develop the management of water to identify and reduce water losses in water supply; inaccuracies in water meters; and high pressure in water supply. The goals for acceptable water loss in water supply shall include an infrastructure water loss index, water audit data validity score, operational basic apparent losses, operational basic real losses, and economic level of water loss.

The plan must also analyze how the supplier of water will progress towards the goal of acceptable water loss; manage water to increase reuse; have a contingency plan for drought conditions; a schedule for implementation of the plan; a plan for installing water meters; establishing standards for water efficiency for new development; establish a tiered rate structure; and establish watering restrictions. In addition, the plan must have measures to evaluate the efficiency of the plan, and the effectiveness of the plan, and for those conservation measures an estimated amount of water that will be conserved per year. As you can see, the requirements for water conservation plans are extensive. In addition, it appears the intent of the statute is to address water conservation for water suppliers with a multitude of service connections, some of which are measured in the thousands of connections.

However, in the state, we have a number of very small water suppliers such as the Dyer Elementary School in rural Nevada; the Animal Ark, which is an animal conservation facility north of Reno; or the Spencer W. Kimball Scout Reservation southwest of Las Vegas. Each of these have less than 15 connections. These facilities only provide water for their operations. To require this type of water conservation planning for these types of locations that are throughout the state is unnecessary, and they should be relieved of that burden. I would now like to walk through the bill and the amendment.

In section 1, subsection 3 [Exhibit J], we have added some limitations on those suppliers of water that are other public and private entities. They have to have more than 15 service connections and have to serve year-round residents of the system. That is the extent of the change, and I am available for any questions.

Chair Cohen:
Can you explain again, are those service connections always going to be for different locations, or can that be one facility with multiple service connections?

Assemblyman DeLong:
Yes, you could have as few as 1 or as many as 14 and still be subject to this amendment.

Chair Cohen:
Was this a requirement that we recently added?

Assemblyman DeLong:
I do not have that information. I know that the State Engineer is here, and my guess is he is going to come up and speak in neutral. He might be able to provide that data.

Assemblywoman Anderson:
My first question has to do with the chapter, not necessarily language that you are bringing forward, but it had me thinking. When you spoke about the education area around it, has there been any or have you considered any sort of discussion about what was passed last session where we were able to educate individuals about how much water usage or abuse is used for areas that are right around traffic areas, in particular where there is grass? I am bringing this up to see if you would be open for an amendment, because at this time, that language is only available for the most populous county in our state.

Assemblyman DeLong:
I would be glad to have further discussions with you about that.

Assemblywoman Anderson:
Thank you so much for letting me bring that into the room. My second question has to do with the amendment [Exhibit J] and the decision to remove section 1, subsection 2(b). Does the usage matter anymore, or was the decision to remove the use of 3 acre-feet based upon other information?

Assemblyman DeLong:
The bill was originally drafted such that the restriction on the need to supply a water conservation plan was based on the amount of water used. In further discussions, including with the State Engineer, it seemed more appropriate to use service connections as the limiting factor.

Chair Cohen:
You could have a supplier with one service connection that is using a lot of water that we need to get this information on, correct? We are presuming that if you do not have that many connections, you are not using that much water.

Assemblyman DeLong:
Yes, they could be using a certain amount of water, but it would be limited by their water rights. For the three examples I gave, their use is in the neighborhood of single digit acre-feet per year; a very small amount of water. As an example, the Dyer Elementary School has a water right of just over 6 acre-feet.

Assemblywoman La Rue Hatch:
My first question is under this current language. Could these facilities then be allowed to ignore all conservation measures? For example, if they are in Clark County where they are not allowed to have certain turf or recreational lawns, could they now completely ignore that and do whatever they want with their water?

Assemblyman DeLong:
This regulatory relief would limit their need to have a plan for water conservation. They would still be subject, in my mind, particularly in Clark County, to any land use restrictions that the county or the city may have on them.

Assemblywoman La Rue Hatch:
I understand what you are talking about. These facilities may not need to do the extensive plans that other, much larger entities are doing. In the interest of really focusing and ensuring we are only achieving what you want to achieve, could we not simply excuse them from that one requirement without changing their entire category within the chapter?

Assemblyman DeLong:
I would be glad to have further discussions with you about how to change the current friendly amendment language.

Assemblywoman Considine:
Originally, I was looking at this and I saw the original bill, before the amendment, had 3 acre-feet, which I think is close to a million gallons. Then you mentioned 6 acre-feet for one example, which is close to two million gallons. My question is, taking out the 3 acre-feet limit, I need some more information on what close to two million gallons could be used for if it is just one user, or one area.

Assemblyman DeLong:
The example I gave was for the Dyer Elementary School which is in Dyer, Nevada, in Fish Lake Valley. They are using water for toilets, as well as sinks, and probably some landscaping. One or two million gallons, in the scheme of water use, over a year, is a very small amount of water.

Assemblywoman Hansen:
When we talk about how many acre-feet the Dyer Elementary School has, it does not mean they use all 6 acre-feet. It means they are allotted that, right? They do not go over that per se.

Assemblyman DeLong:
Yes, that is correct.

Assemblywoman Hansen:
In your opening remarks, you mentioned three examples in the state. It is not just those three, it applies to others, and you just named three on the record. Is that correct?

Assemblyman DeLong:
There are actually about 350 suppliers of water that would fall into this category.

Chair Cohen:
I am going to presume everyone is a good actor and they are small entities. If there are leaks or those types of things, to where they are losing water that they do not even realize they are losing, would the conservation plan help them figure that out? Or is the conservation plan causing them to waste time and effort and spin their wheels when it is not saving water for the state?

Assemblyman DeLong:
Given that these are such small users, another example is a 7-Eleven in Elko. They have so few uses of water that they are likely going to see where they have a leak. It is not like a supplier of water that has 3,000 service connections and hundreds of miles of pipe that they are trying to manage. I think given the size of these users, I would think the plan has limited use in their watching for leaks in their pipe.

Chair Cohen:
This bill is for 14 connections and under. With that many connections, would the plan make a difference? I think we want to save water where we can, and we want to conserve where we can, but we certainly do not want to make more work for anyone who does not need it.

Assemblyman DeLong:
If we want to look at trying to add some conservation measures and revise language, I am more than interested in working with the Committee on that.

Chair Cohen:
Seeing no other questions, I will move on to those in support in Carson City, Las Vegas, and Elko. Seeing no one, is there anyone on the phone? Hearing no one, is there anyone in opposition?

Patrick Donnelly, Private Citizen, Shoshone, California:
In my upcoming comment, I am representing myself. We are in supportive opposition of this bill. I believe the original version was a little closer with the 3 acre-feet limit. The Chair raised a very good issue about the potential for large amounts of use on the 15 service connections. I think having that acre-foot limit is the best approach.

The reason I am supporting this bill on a personal level, I live in a small community of 200 people. I am the T2 Water Treatment Systems Operator for our small community water supply. The regulatory burden on tiny water facilities is huge, and typically these are run by volunteers. These are run by small communities that have a very limited ability to respond to large regulatory burdens. I think we use just a couple of acre-feet a year at our community water supply, and we would definitely know if there was a leak because it is such a small amount of water. Meanwhile, relieving that regulatory burden on small community water supplies really does make a difference in their being able to provide for their communities. While we oppose a word or two here, we do support the intent of this bill. Thank you.

Chair Cohen:
Seeing no one else for opposition in Carson City, Las Vegas, or Elko, is there anyone on the phone? Hearing no one, is there anyone in neutral? Seeing no one in Las Vegas or Elko, I will go to Carson City.

Adam Sullivan, P.E., State Engineer and Administrator, Division of Water Resources, State Department of Conservation and Natural Resources:
I am testifying neutral on this bill. The reason I am testifying is our staff are the ones who receive and review these plans and work with those who have to prepare the plans and assure that people who are required to do so, actually put it together in the way that it is prescribed. Water conservation plans are an important and valuable tool for small water providers to be water conscious. As discussed already, there is a common awareness that there are a number of very small users that get swept up in this and are developing plans that do not provide a whole lot of practical use. We agree that the proposed amendment to 15 connections is an appropriate cutoff. That would be consistent with a standard that the Division of Environmental Protection uses for small water providers, which would help in the administration of determining who this applies to. Among small water users, there is an awareness and other opportunities for water conservation that are in place and are realistic and practical that this would not threaten. Some other examples are seasonal campgrounds that get swept into this that perhaps put together plans that do not end up being particularly practical. A small restaurant with a gas station is another example. We have a lot of those.

Another element here is that by not requiring those small entities to put together a plan, it makes it more efficient for our staff to be able to spend their time working on larger water providers where there really are important and valuable elements to having a robust water conservation plan. If you have any questions about the statistics or the content of the plan we do, our staff who work on these plans are here this evening and I am sure they would be happy to come up and help answer any detailed questions if you have them.

Chair Cohen:
For your office not having to review this, would that be helpful? We have talked before about your office and some of the burdens on your office right now. Would you say this would be helpful and that your office time would be better spent doing other work?

Adam Sullivan:
Yes, very much so.

Chair Cohen:
Seeing no one else in neutral, is there anyone on the phone? Hearing no one, Assemblyman DeLong, would you like to make some final remarks?

Assemblyman DeLong:
I would just like to say thank you very much to the Committee for the hearing and the questions. I am looking forward to working with those who had suggestions on potential amendments.

Chair Cohen:
I will bring Assembly Bill 191 to a close and will open up for public comment. Is there anyone in Carson City, Las Vegas, or Elko for public comment? Seeing no one, is there anyone on the phone? Hearing no one, are there any comments from the Committee? Seeing none, with that, we are adjourned [at 5:57 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 draft mock-up amendment to Assembly Bill 387, presented by Assemblyman Howard Watts, Assembly District No. 15.

Exhibit D is a letter dated March 28, 2023, submitted by Laurel Saito, Nevada Water Strategy Director, The Nature Conservancy, in support of Assembly Bill 387.

Exhibit E is a letter dated March 28, 2023, submitted by Emilia Cargill, Chief Operating Officer, Senior Vice President, and General Counsel, Coyote Springs Investment, in opposition to Assembly Bill 387.

Exhibit F is a letter dated March 28, 2023, submitted by Dorothy A. Timian-Palmer, President/CEO, Vidler Water Company, in opposition to Assembly Bill 387.

Exhibit G is written testimony dated March 30, 2023, submitted by Karen Peterson, representing Vidler Water Company, in opposition to Assembly Bill 387.

Exhibit H is written testimony submitted by Jay Dixon, Water Rights Engineer, Flying M Ranch, in opposition to Assembly Bill 387.

Exhibit I is written testimony submitted by Chris Mahannah, representing Churchill County; and Truckee-Carson Irrigation District, neutral to Assembly Bill 387.

Exhibit J is a proposed amendment to Assembly Bill 191, presented by Assemblyman Rich DeLong, Assembly District No. 26.