



P.O. Box 75 Baker, Nevada 89311
(775) 881-8304

GREAT BASIN
WATER NETWORK

info4gbwn@gmail.com
GreatBasinWaterNetwork.org

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Testimony of Howard Watts, Communications Specialist
RE: Opposition to AB 298

Chair Cancela and members of the Senate Natural Resources Committee,

The Great Basin Water Network is a nonprofit, nonpartisan organization working for sustainable water policies that protect the Great Basin watersheds for current and future residents – human, animal, and plant.

After careful consideration of AB 298 and the latest proposed amendment, we stand in strong opposition to the bill. We appreciated having the opportunity to express our concerns and work towards resolution, and acknowledge that some of our concerns have been remedied. However, the proposal remains a drastic rewriting of Nevada water law, which would open the door to groundwater mining and threaten the widespread destruction of Nevada's rural communities as well as the state's wildlife and plant communities. Below are the specific points of our opposition:

1. A statutory definition of perennial yield is not necessary. For decades, the State Engineer has relied on a scientifically sound definition of perennial yield that has served the state well by ensuring the sustainable use of groundwater, modified based on the unique hydrology of each basin. If AB 298 is to include a definition of perennial yield, it should be the State Engineer's long relied upon and widely accepted baseline definition in its entirety. This new definition would not limit the perennial yield to the recharge or discharge of a basin or require capture of that discharge, and opens the door to unsustainable groundwater mining. Such an approach would all but ensure the destruction of Nevada's groundwater dependent ecosystems and the rural communities which depend on them.

2. A statutory definition of environmental soundness is also unnecessary. The toothless definition of environmental soundness included in AB 298 would grant almost unlimited discretion to the State Engineer to determine what would constitute an unreasonable harmful impact, as well as discretion to determine which plant or animal communities would qualify for protection. It also inappropriately narrows the scope of protection to the basin from which the water is to be pumped, turning a blind eye to impacts on an interconnected, downgradient basin. It would permit destruction of existing plant and wildlife communities on a massive scale, sanctioning pumping that results in the replacement of native plant and animal communities with invasive species.

3. The latest amendment continues to provide an outline of the content for monitoring, management, and mitigation plans, but again fails to require the inclusion of clearly defined resource specific quantified triggers and thresholds calculated to effectively identify and avoid conflicts or harmful impacts well before those impacts are predicted to occur. Instead this bill only requires identifying the unreasonable impacts themselves, without any concrete plan to avoid damage before it's too late. Without those triggers and thresholds, 3M plans would be ineffective in avoiding or mitigating impacts and have no hope of protecting existing rights and natural resources. This approach also would be inconsistent with and far outside the generally accepted practice for 3M plans in the scientific community and in direct conflict with the repeated guidance of Nevada's District and Supreme Courts.

4. The latest amendment also removes any requirement that the applicant demonstrate by substantial evidence that the applicant has the ability to furnish mitigation water of sufficient quality, quantity, and reliability to eliminate the conflict. This provision was initially included to remedy GBWN's concern with the bill's mitigation water provisions. Additionally, AB 298 must make clear that mitigation water is subject to the same water rights application process as any other water right. While the highly problematic exemption from this process was removed, the result now is a lack of clarity. Without a clear requirement for an application process for mitigation water, the impacts of such a use would not be subject to review or limitation and impacts will simply be masked or redirected.

5. Section 3(5), requiring the State Engineer to deny 3M plans that do not eliminate conflicts was deleted from the May 11 amendment of AB 298. The bill must include a provision requiring the State Engineer to deny 3M plans unless it can be demonstrated by substantial evidence that the 3M plan will eliminate all conflicts with existing rights, the public interest, and the environmental soundness component of Nevada law.

6. Finally, Sections 21 and 22 as redrafted in the May 11 draft of AB 298 continue to apply AB 298 retroactively, in an attempt to solidify the State Engineer's previous reliance on 3M plans. Applying these flawed new definitions and problematic loopholes to applications and decisions dating back decades would be a disaster for the state.

GBWN and others have worked diligently within the group of stakeholders, when included, for five months. We do not believe that AB 298 has made significant or sufficient progress towards remedying our concerns, and in some areas the latest draft is a step backwards. Such a drastic rewriting of Nevada's water law would have devastating ramifications for the future of rural areas - for tourism, the economy, the environment, and the communities themselves. Nevada's water law is grounded in sound policy as well as science and has served our state well for generations; it needs only to be followed. AB 298 is unnecessary and would have devastating consequences for our future.