



April 7, 2021

Assemblyman Howard Watts III
Chairman
Committee on Natural Resources
Nevada Legislature
401 S. Carson Street
Carson City, NV 89703

Subject: Central Nevada Regional Water Authority Opposition to AB354 and AB356

Dear Assemblyman Watts:

The Central Nevada Regional Water Authority has reviewed the amendments to AB354 and AB356 proposed by the Division of Water Resources at the Committee's April 5th hearing and remain opposed to both bills.

Generally, the purpose of water banking statutes has been primarily to encourage conservation, a goal that is not even included in the water banking bill. Rather, the bill is expressly designed to facilitate a water market.

AB354 leaves every aspect of the structure and rules governing a proposed water bank entirely in the hands of the applicant with minimal standards to guide formation of such banks. Section 20, governing statutory water banks, even goes so far as to leave it up to the applicant to determine what appeal and grievance procedures will be allowed, if any, including burden of proof and standard of review provisions. Section 26, governing contract water banks, does not even provide for any such procedures whatsoever. Leaving these provisions, which directly impact the due process rights of Nevada water rights owners and public, in the hands of an applicant, which the bill has defined to include any "person" raises serious constitutional concerns and also would result in differing and potentially inconsistent standards for different water banks.

Sections 23 and 28, governing approval of statutory and contract water bank applications, give the State Engineer far too much discretion to approve applications to create water banks without any guardrails ensuring that such water banks actually are in the public interest. Indeed, these sections make it mandatory for the State Engineer to approve any application for a water bank if the State Engineer deems the application satisfactory and consistent with the extremely broadly stated intent of the statute in Section

Member Counties: Churchill • Elko • Esmeralda • Eureka • Humboldt • Lander • Nye • Pershing • White Pine

3. There are no specific standards applicable to his decision, and as such the statute gives the State Engineer insufficient guidance. Sections 24 and 29 contain no provision for public involvement in the event that an applicant seeks to make changes to its approved water bank application.

AB354 does away with priority administration and allows for operation of water banks without regard for priority of water rights. These provisions undermine the prior appropriation system and could wreak havoc in overappropriated basins to the detriment of agricultural users by providing an end run around priority administration for renters of banked rights.

Section 26, governing contract water banks, permits a public entity to apply for a water bank with even fewer statutory guidance than those set up as statutory water banks. As such, Section 26 gives public entities full control over how to administer water rights.

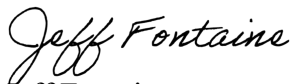
AB356, the Water Conservation Bill facilitates transfers from agriculture to development. The bill likely would result primarily in buy-and-dry scenarios that would facilitate out-of-basin transfers favoring development in urban areas at the expense of agriculture rather than promoting true conservation.

The definition of conserved water leaves far too much discretion to the State Engineer to make a determination as to what conservation methods are acceptable and there is no assurance that such methods will be environmentally sound or that they will comply with existing water law.

Like the Water Banking Bill, the Water Conservation Bill would not in fact result in its purported goal: the conservation of water. Rather, over time it would result in the shift of water use from agricultural use to development in urban areas.

Water banking and water conservation can be important components of a robust and comprehensive water law, however, the approaches taken to both AB354 and AB356 would harm property owners and rural communities.

Sincerely,



Jeff Fontaine
Executive Director

Cc: CNRWA Board of Directors