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Great Basin Water Network's Opposition to AB30 and AB51

With input from Advocates for Community and Environment

Great Basin Water Network is fighting what's likely [the largest proposed groundwater transfer in U.S. history](#) and one of the [greatest threats to biodiversity](#) ever in our nation. The Southern Nevada Water Authority's Groundwater Development plan would pump 58 billion gallons of groundwater annually in a 300-mile pipeline from Eastern Nevada to Las Vegas. The Bureau of Land Management estimated the project would irreparably harm 305 springs, 112 miles of streams, 8,000 acres of wetlands, and 191,000 acres of shrubland habitat in the driest state in the nation.

AB30 and AB51 have been proposed and promoted as forward-looking approaches to improving water management and rectifying over-appropriation of water resources in the State of Nevada. However, the bills are masquerading as something they are not. Neither AB30 nor AB51 addresses the state's core water problems and will result in further mismanagement and over-appropriation of Nevada's limited water resources, threatening the property and due process rights of Nevadans. These bills are an attempt to circumvent some of the most basic and longstanding requirements of Nevada water law under the **Prior Appropriations** doctrine, which guarantees that if you are first in time you are first in right for water. Recent legal rulings have overturned the State Engineer's unlawful approval of certain powerful entities' applications, including most notoriously the Southern Nevada Water Authority's patently unsustainable and destructive proposal to pump 58 billion gallons of groundwater annually from rural valleys in Eastern Nevada to the Las Vegas Valley. **Voting YES on these bills means you are voting to facilitate a multi-billion-dollar, 300-mile pipeline and groundwater pumping project.**

Roughly a third of Nevada's hydrologic basins already are fully appropriated or over-appropriated. However, that problem is not due to any deficiency in Nevada's water law. Rather, Nevada's State Engineers historically have been too prone to over-allocate the State's limited water resources in response to applicants' desire for more water, even when it is not really or sustainably there for the taking. Nevada is the driest state in the nation. Given this stated policy and the office's historic over-allocation of water resources in the State, it would be extremely imprudent to give even greater flexibility and discretion to the State Engineer, as AB30 and AB51 propose to do.

AB30 aims to encourage the use of **Monitoring, Management, and Mitigation (3M)** plans to help resolve conflicts between Nevadans with existing junior and senior rights. Because the law already allows the use of 3M plans to address conflicts, AB30 is unnecessary. The legislation in actuality is designed to allow the State Engineer to freely loosen the standards applicable to mitigation plans and, while it is not explicitly stated, to sanction the use of promised "replacement water" to mitigate conflicts. This approach would merely shift and potentially worsen impacts associated with over-appropriation rather than correct the problem. Further, there are no due process protections for the public or for senior water rights holders who may need to challenge the State Engineer's unchecked determinations in order to protect their rights and the environment. Senior rights holders would have few avenues to ensure the adequacy of

a 3M plan, which raises serious concerns about the overwhelming discretion bestowed upon the State Engineer by this bill. ***This bill will only exacerbate conflicts.***

AB51 proposes to implement **Conjunctive Management** policies — which are tools recognizing that surface water and ground water are one in the same — as a means for granting new water permits and managing existing allocations. In theory, this is a good idea. But the details of AB51 have nothing to do with responsibly managing water resources conjunctively. The bill merely seeks to sanction schemes whereby those with money will be permitted to buy their way around conflicts with existing senior water rights while continuing to perpetuate the problems associated with unsustainable over-appropriation of the resource. The conjunctive management policy contained in NRS 533.024(1)(e) should not be used to justify replacement water schemes and other standardless mitigation provisions as a means for continuing to over-appropriate and misuse our State's limited water supply. As written, AB51 appears to encourage further mismanagement of an already over-appropriated resource in the Nation's driest state, providing a vehicle for the State Engineer to sidestep conflicts in ways that would damage senior rights holders and the environment.

[Conclusion: GBWN Opposes AB 30](#)

- AB30 is unnecessary because a State Engineer already can, under current law, grant a permit if he finds that predicted conflicts will be eliminated by a 3M plan.
- AB30 allows the State Engineer to both define the necessary requirements of a 3M Plan and then to determine what would constitute adequate mitigation of conflicts under that plan without regard for the more basic requirements and safeguards that have been at the core of Nevada water law for many decades.
- AB30 raises the serious specter of the State Engineer adopting a new process and procedure for granting new water rights that may systematically violate the due process and takings protections of senior water rights owners under the United States and Nevada constitutions.
- AB30's potential for replacement water schemes without sufficient legislative guidance is an inherent flaw in the bill that exacerbates existing impacts of over-appropriation in the state.
- The unfettered discretion of the State Engineer, the threat to real-property rights, and the lack of due process in the bill make it unacceptable.

[Conclusion: GBWN Opposes AB 51](#)

- AB51 sanctions monetary compensation as an adequate mitigation tool on the premise that it would suffice to make senior water rights owners whole.
- AB51 does not give the State Engineer sufficient guidance in promulgating regulations on conjunctive management and leaves too much discretion to the State Engineer to determine what conjunctive management in Nevada will involve.
- AB51 undermines the Prior Appropriations doctrine and elevates junior rights above seniors by permitting junior rights to continue pumping even where that pumping conflicts with senior rights.
- AB51 sanctions loose permission for the proposed use of replacement water as a mitigation tool to make senior water rights owners whole.
- If lawmakers want to have a discussion about Conjunctive Management, we are ready to bring ideas to the table, but AB51 is unacceptable as drafted.

