

# The Nevada Independent

## State engineer proposes legislation to update Nevada water law, reviving a debate over mitigation and the Las Vegas pipeline

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Water is in short supply throughout the West, and in many areas of Nevada, the nation's driest state, there is simply not always enough water to go around.

And that creates conflicts.

The battles are always different, but they often revolve around the interpretation of three words: Western Water Law. In Nevada and the arid West, water rights are based on a system in which those with the earliest claim to water — those with “senior rights” — have a priority to water. No other water user with a later claim is allowed to water meant for users with senior rights.

The law is strict on this.

When a water user seeks permission from the state engineer to use water, they have to file an application. If it conflicts with an existing use — by drawing down a spring or diverting too much of a stream — a water user with senior rights can protest the application and effectively kill it.

If the state's top water regulator has his way, those protest rules could become harder.

With the Legislature convening in February, State Engineer Jason King is proposing three bills that he argues are needed to update Nevada water law for changing times and new science.

"There are things that need to be changed and these bills are part of that change," said King, who is retiring in January before the legislative session. But as is true with all things involving water, the legislation is already controversial. What state officials have cast as a modernization of Nevada law, others have criticized as an attempt to enable large-scale development and projects, including the Southern Nevada Water Authority's proposed rural pipeline, to the detriment of water users with longstanding historical claims to water.

Much of the debate is likely to center around [Assembly Bill 30](#).

### **Assembly Bill 30**

As introduced, the legislation would allow the state engineer to consider mitigation plans to avoid or eliminate a conflict when weighing an application to use or claim water. One type of plan the bill would allow for is a 3M plan, short for "mitigation, management and monitoring."

Such plans deal with conflicts through mitigation. If pumping groundwater dried up a spring, a 3M plan would mitigate the user reliant on the spring by providing replacement water or another type of mitigation. King said the plan is used in other states. The challenge in Nevada is that, because of its aridity,

replacement water can be difficult to come by and hard to move. The concept would be to require mitigation that would keep users with senior rights whole. For years, the 3M plan concept has been the subject of intense debate, including in the 2017 Legislative session. [Assembly Bill 298](#) received fierce criticism from ranchers, farmers, rural towns and environmentalists in part because the bill would have allowed 3M plans in statute. The state engineer has allowed 3M plans to be used in certain cases, although they have been the subject of much litigation. The water authority included a 3M plan [in its application to pump and pipe groundwater](#) about 250 miles from rural Eastern Nevada to Las Vegas as a future option to augment the Colorado River. Opponents of the project are challenging that in court.

And they plan to oppose the state engineer's legislative effort.

"AB30 threatens senior rights holders and assumes that there is excess water in the nation's driest state," Kyle Roerink, the executive director of the Great Basin Water Network, wrote in an email. "The words 'water grab' aren't in the bill, but the implications are written all over it."

King said 3M plans could be applicable in other cases, providing the office with more flexibility in resolving conflicts. King would not mention specific projects, but there are ongoing conflicts in Kobeh Valley, the Humboldt River Basin and Coyote Springs where mitigation could be used.

"It's a tough issue," King acknowledged. "There are a lot of people on both sides of the issue."

Without the plans, he noted that protests can hamper the state's ability to issue new rights to pump groundwater out of aquifers where there is water available to appropriate.

"That is an issue that has come up in some pretty high-profile cases recently. Being the driest state in the nation, we feel that it is bad policy that perhaps one or two small water rights could hold an entire basin hostage for appropriating that water if it's there," King said.

A spokesperson for the water authority did not comment on the bill, but said the authority would support aspects of a water conservation bill proposed by incoming Democratic Assemblyman Howard Watts. Watts, a former spokesperson for the pipeline opponents, is pushing a bill that would update efficiency requirements for indoor water appliances and utility conservation plans.

"I'm glad to have their support," Watts said. "In my previous role with the water network, we have clashed, especially on 3M and other issues that have connections to the pipeline project. I'm happy to have an issue that we're able to work together with them on."

### **Assembly Bill 51**

A second bill floated by the state engineer — [Assembly Bill 51](#) — recognizes modern hydrologic science, which increasingly views groundwater and surface water as connected resources. The idea is that groundwater pumping can affect the amount of water in springs, and the amount of water in streams can affect how much groundwater there is. Assembly Bill 51 would allow the state engineer to enact regulations to pursue the "conjunctive management" of aquifers and rivers as one resource. These regulations would allow the state

engineer to come up with a conjunctive management program in basins and levy an assessment to fund mitigation.

“We are trying to harmonize the law with the science,” King said.

In most cases, conjunctive management recognizes the fact that there is not as much water to go around as hydrologists and politicians once thought when they issued water rights. The fact is there is more water on paper than there is actual water to go around. Those with senior rights often get their water from rivers, while those with junior rights often pump water from the ground.

Using a strict application of Western water law, junior rights — or groundwater users — would be cut off in times of shortage or amid a conflict. After Humboldt River farmers saw a decrease in surface water during the drought, they sued to curtail groundwater pumping in 19 aquifers. That would have potentially cut off businesses and even some cities from their water sources. To avoid curtailment, King’s staff has begun [creating a conjunctive management program](#), whereby conflicts between groundwater users would be mitigated to keep surface water users whole. The bill would help the state engineer’s office continue pursuing that mitigation program, but King said in an interview that the regulations could have applications in other basins. “The Humboldt is not the only basin where we are going to have to have this conversation,” he said.

### **Assembly Bill 62**

Under Nevada law, water users are required to put their allocation to beneficial use for ranching, mining, drinking water or a long list of other permissible purposes. If a water user does not put its allocation to use, that user risks losing the claim. But in reality, many water rights are never used.

They exist only on paper. And that's because the statute provides for several exceptions.

The state engineer is hoping to close some of those loopholes.

[Assembly Bill 62](#), which is likely to stir controversy among many water rights holders, puts a limit on how many times the state engineer can extend the deadline for constructing projects — like a well or a diversion — to put water to use. As introduced, the legislation would put a 15 year- limit on extensions for a construction deadline if it's a municipal project and a 10 year-limit if it's a big agricultural project. It would put a 5-year limit on extensions for all other projects.

“We need to get those people who are not beneficially using water to do it or not,” King said. “If not, get out of the way and let the next person [with rights] to use the water.”

He called the bill a step forward, adding that further changes might be needed in the future. The legislation would still allow the state engineer's office to issue extensions for putting the water to beneficial use, potentially allowing for water users to sit on their rights if they meet certain statutory requirements. The concern is that might create opportunities for speculation.

“This is going to get a lot of attention and we thought we'd start [here],” he said.

*Disclosure: Howard Watts III has donated \$500 to The Nevada Independent. You can see a full list of donors on [our donor page](#).*