

Tell Nevada Legislature not to undermine water law, says Howard Watts III commentary

Howard Watts III

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Our state's top water official — the State Engineer — wants “flexibility” to manage conflicts if it turns out the State allowed water pumping that impacts the environment or other users of that water resource. That might sound reasonable, but unfortunately various loose interpretations, over-optimistic assumptions, and loopholes since the start of Nevada water law have led one in every five water basins to become over-appropriated, with more rights on paper than water to supply them.

Past State Engineers have ignored the links between ground and surface water, failed to count thousands of domestic wells against a basin's yield, or assumed not all water rights will be put to beneficial use. Their actions have allowed for the most development, and left future generations on the hook for the results of over pumping.

Our state's water law was designed to protect water resources from being overused, and to protect those that came first from having their water taken by thirsty newcomers. That's why Great Basin Water Network, White Pine County, and others have been successful in court, challenging State Engineer decisions to approve water rights for a massive groundwater pipeline from Eastern Nevada to Las Vegas. Flexibility is the problem, not the solution. What the state needs is clear guidance to be prudent, not a blank check to rubber stamp water rights now and deal with the problems later.

The State Engineer's broad proposal would also contradict Federal and state constitutional protections for due process and property rights. Lawsuits over the government's “takings” could be plentiful and costly for taxpayers as senior rights holders seek compensation for diminished resources.

On Aug. 26, the Nevada Legislative Commission's Subcommittee to Study Water finalized its recommendations to change water law during the 2017 Legislative session. State Senators Pete Goicoechea and Aaron Ford committed to drafting a bill to allow flexibility through “adaptive management.” Great Basin Water Network asks them to work with us to make sure changes strengthen our state's water law, not weaken it. Anything half as vague as the State Engineer's plan should be a non-starter.

To be clear, GBWN doesn't oppose mitigation plans. But that process has to happen before rights are granted, with specific triggers and remedies. The burden and mandate must be on the applicant as a junior rights holder to scale back when conflicts occur.

We believe language is already in state law and said as much in comments to the Water Subcommittee. Perhaps the State Engineer needs it spelled out even more, but giving broad authority to grant water rights now, with a promise to deal with conflicts later is a mistake. It jeopardizes senior water rights and exacerbates, rather than controls, the state's chronic over-appropriation problems.

It's essential legislators hear from all Nevadans who depend on consistent and fair water policy — including farmers and ranchers, well owners, and others whose livelihoods depend on water — before the state's law is changed in ways that jeopardize senior water rights and provoke lawsuits over the takings of property rights.

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