



Report to the Public Lands Committee on Listening Sessions

State of Nevada
Department of Conservation and Natural Resources
Division of Water Resources

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Introduction

During July and August 2014, the Nevada State Engineer held seven official listening sessions in communities throughout the state (Lovelock, Elko, Ely, Pioche, Las Vegas, Tonopah, and Carson City). Notification of these sessions were through a press release, a publication in local newspapers, posting on the Division of Water Resources website and a mass emailing to water professionals throughout the state. Despite this outreach, only 200 people attended the seven listening sessions.

The State Engineer held these listening sessions to provide information on water-related issues in Nevada, proposed bill drafts and most importantly, to listen to the public regarding issues of concern raised by those who attended. The following only lists the matters discussed, opinions expressed, and questions raised. It does not provide any analysis, response, or address individual issues. The State Engineer will be preparing a more detailed report analyzing the broader issues raised and possible initiatives that may be proposed in response.

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Lovelock Listening Session

July 28, 2014

(50 attendees)

1. Conjunctive Use – Discussion was had regarding conjunctive use, which is the use of surface water and groundwater to optimize the water supply and prevent undesirable effects to either. It could include the storage of surface water in aquifers during wet years to use in dry years.
2. Augmentation plans – Should junior groundwater right applicants be required to provide surface water to senior appropriators prior to the granting of a groundwater right in hydrologically connected waters?
3. Pit Lakes – What should be done with them?
 - a. Fill them in with waste rock?
 - b. Require a water right to cover the evaporation from them?
 - c. Can pit lake water be used during drought?
4. What is meant by temporary in nature mining water rights? Should temporary in nature be defined in statute?
5. Drought – In river dominated basins, should groundwater pumping by water right holders junior to senior surface water right holders be curtailed in times of drought in order to protect base flows to hydrologically connected rivers?
6. Regulation by priority – Should the State Engineer actively pursue basin regulation, which entails cutting off groundwater rights from use?
7. Discussion of water quality issues in the Lovelock basin and future development of water resources in the area.
8. Should the State Engineer use water level declines as a measuring stick for cutting off users?
9. South Fork Humboldt River flood flows – Should they be sent down the river instead of using it in the reservoir?
10. Cloud seeding – Should the State take the lead in pursuing a cloud seeding program?
11. Valmy area stream losses in the Humboldt River. Should the State attempt to improve that stretch of the river?
12. Should there be aquifer storage and recovery projects (ASR) in the headwaters of the Humboldt River?
13. Should junior groundwater right holders be paid to not pump so senior surface water right holders get their water?
14. Should supplemental groundwater rights be issued in river dominated basins?

Elko Listening Session

July 29, 2014

(27 attendees)

1. Can the State Engineer allow an agent to sign stockwater affidavits?
2. When a water right or a portion of a water right is withdrawn from a change application, will the State Engineer allow it to revert to the base right from which it was changed?
3. A request was made of the State Engineer to meter all wells in basins along the Humboldt River.
4. It was suggested that the State Engineer adopt a new assessment on mining and use it for cloud seeding.
5. Explained the operations of South Fork Reservoir and release of flood flows.
6. A request was made that personnel from the Division of Water Resources and the Pershing County Water Conservation District and other interested parties meet once a year before the irrigation season.
7. Questions on the effect of merely filing a protest; is the filing of a protest enough by itself to deny an application?

Ely Session

July 30, 2014

(24 attendees)

1. Discussion of the BDR that proposes to change the threshold for triggering NRS § 533.364 inventory; proposed change from 250 acre-feet annually to 25% of the perennial yield.
2. Concern was expressed that too many basins are fully or over appropriated.
3. A questions was raised as to whether mountain block springs should be included in any NRS § 533.364 basin inventory. Additionally, a concern was raised about private contractors entering private lands in conducting an inventory.
4. Discussion of potential future water issues in Grass Valley, i.e., the proliferation of domestic wells near an area with senior irrigation rights.
5. Domestic wells – Does the State Engineer have the general authority to reduce the quantity of water that may be pumped by domestic wells or can he reduce use of domestic wells only by regulating by priority?
6. Does a new inventory have to be completed for each interbasin transfer, even if the new transfer is in the same basin for which an inventory has already been prepared?
7. Are BLM Public Water Reserve 107 claims holding hostage many new project proposals, even where there is no merit to claim?
8. It was asserted that a Public Water Reserve 107 claim can be filed for domestic and stock water only, not wildlife. What manner of use supports a PWR 107 claim?

9. Should the State Engineer initiate a drop dead time for filing of proofs of appropriation on pre-statutory vested water right claims?
10. Concerns were raised regarding the new U.S. Forest Service proposed directive on groundwater management.
11. Concerns were raised regarding the U.S. Environmental Protection Agency's proposed definition of "water of the United States".
12. Concerns were raised regarding mercury contamination from the use of silver iodide in cloud seeding.
13. It was requested that the State Engineer require the completion of an adjudication of pre-statutory vested rights and implied federal reserved rights before acting on applications for interbasin transfers of water.
14. Concerns were raised about fracking and its impact on warm/deep source springs.
15. Concerns were raised about whether the drought or mining uses of water are causing the loss of surface water flows in the Humboldt River.
16. The question was asked as to why does the State Engineer issue permits for wildlife on springs when NRS § 533.367 already requires that water be left at spring for wildlife that customarily uses the water?
17. Should guzzlers be allowed for livestock use without a water right?
18. Who should be allowed to hold wildlife permits?
19. Discussion was held regarding the expansion of acreage if the quantity used is limited to the consumptive use of the water right.
20. The State Engineer was urged to pay attention to drought and lack of water, particularly in basins that are fully appropriated.
21. What is the influence of pinyon pine and juniper trees on the amount of recharge or quantity of water available for appropriation?
22. Will the State Engineer allow new appropriations for commercial purposes in fully appropriated or closed basins?
23. Will the concentration of domestic wells and septic systems eventually pollute the groundwater resource; should the State Engineer limit domestic wells?
24. Can a water right be issued for wildlife when it includes wild horses?

Pioche Session

July 31, 2014

(13 attendees)

1. Pinyon-Junipers. At one point during the mining days, there were no pinyon-juniper trees using water; however, now there are a lot. What kind of effect are they having?
2. An opinion was expressed that there is virtually no significant recharge in Steptoe Valley (current studies say otherwise) and that Spring Valley and other valleys are similar; therefore, there is no water available for appropriation in those basins.
3. The Division was encouraged to be conservative in estimates of perennial yield.

4. In those areas where there is surface water, it was hoped the Division would issue supplemental groundwater for those dry years when surface water is not available.
5. A point was made that county governments would like to provide water to their citizens, but due to the size of the basins, infrastructure is a problem. Should collaborative discussions be pursued between counties or municipalities for joint development of groundwater projects?
6. A concern was raised over government picking and choosing which laws to follow.
7. A concern was raised about basins in effect being closed to junior water right applicants due to pending senior applications for which the applicant is not ready for action. For example, Southern Nevada Water Authority interbasin transfer applications, Washoe County applications, Virgin Valley Water District applications and Lincoln County Water District applications that have held up junior applications for years.

Las Vegas Session

August 5, 2014

(22 attendees)

1. A spokesperson for the Sierra Club expressed concern with four areas.
 - a. There should be no interbasin transfers allowed;
 - b. Water quality in pit lakes;
 - c. Fracking; and
 - d. Groundwater depletion in the west and southwest.
2. Should the use of desalination be encouraged?
3. Domestic well issues in Pahrump Valley. Should the State Engineer call for proofs of beneficial use from utilities in the basin?
4. A concern was raised that the State Engineer's office seems to be all 3 branches of government. Is this fair?
5. It was requested that the State Engineer begin sending 30-day notices on forfeitures after an extension of time to prevent forfeiture has been granted in order to prevent forfeiture.
6. Over dedication to subdivision lots in Pahrump was supported as good water management.
7. Can someone protest municipality extensions of time?
8. Concerns were raised regarding mercury contamination from the use of silver iodide in cloud seeding.
9. A concern was expressed that the perennial yield in Pahrump Valley is not specifically determined at this time.

Tonopah Session

August 7, 2014

(13 attendees + 6 in Pahrump via video)

1. An opinion was expressed that the State Engineer has no authority to call for proofs of beneficial use basin-wide, but rather can only regulate by priority. This opinion was based on the assertion that:
 - a. The State Engineer lacks statutory authority;
 - b. The extension statute requires calling for proofs of beneficial use by individual permit not by basin-wide order;
 - c. It is not fair;
 - d. That it could be a constitutional takings; and.
 - e. A basin-wide call for proofs of beneficial use will conflict with the prior appropriation system of appropriating water.
2. It was recommended that the State Engineer request an Attorney General opinion on whether he can call for proofs of beneficial use basin-wide.
3. It was recommended that Nye County require a 2 acre-foot dedication for any new domestic well in Pahrump Valley.
4. Discussion on the proposed BDR on Active Management Area/Critical Management Areas.
5. Regulation of domestic wells; what can be done?
6. Can the State Engineer prepare basin abstracts for surface water sources akin to what is produced for active groundwater rights?
7. Additional discussion on the issue of pit lake water.
8. Discussion was had whether federal claims to water should be adjudicated in federal or state court.
9. Should the State Engineer initiate a drop dead time for filing of proofs of appropriation on pre-statutory vested water right claims?
10. Concerns were raised regarding the new U.S. Forest Service proposed directive on groundwater management.
11. The State Engineer was encouraged to work with the BLM on right-of-way and water right issues so that the water right applicant is not caught in a Catch-22.
12. What is the definition of over allocated?
13. Southern Nevada Water Authority pipeline update.

Carson City Session

August 12, 2014

(47 attendees)

1. Defining perennial yield. Does recharge belong to the groundwater basin even if it discharges to a surface water source? Is that not the base flow for the river and belongs to the river? How do we allocate full perennial yield if some of that recharge is discharged as base flow to the river?
2. Quantification of diversion rate only certificates; will this be done retroactively in-house or will the water right holder be asked for information to support any quantification?
3. Concern about the effect of granting additional water rights on the environment. Continuing to allocate water, but might not see the effect or damage to streams and rivers for years.
4. Conservation in general is treated with a cavalier attitude. The opinion was expressed that water agencies are not concerned with wasteful use of water and should not police themselves. Should there be more State oversight?
5. The opinion was expressed that conservation plans for municipalities need more substance.
6. The opinion was expressed that municipalities should have stronger penalties for wasting water to encourage conservation.
7. The opinion was expressed that in river dominated basins, groundwater pumping should be curtailed or that groundwater pumpers who are affecting surface water flow should acquire surface water rights to offset the impacts of groundwater pumping on the surface source.
8. A concern was raised about the effect of changing the point of diversion of large water users into concentrated areas and the impact on existing water right holders and domestic wells.
9. A concern was expressed regarding small water rights holders having a problem participating in the protest and hearing process because of lack of money to participate. It was suggested that a protest could be filed for a “project” instead of requiring a protest for each water right application.
10. 3M Plans (monitoring, management and mitigation plans) – who enforces them?
11. It was suggested that, in establishing perennial yields, water should be left for the plants and that the evapotranspiration from plants should not be counted as part of the perennial yield.
12. Does the Office of the State Engineer have adequate staff? For example, if call for the filing of all proofs of appropriation of pre-statutory vested water rights, is there staff to take them through adjudications?
13. The opinion was expressed that the fees for filing proofs should not be raised if the State Engineer is going to call for proofs.
14. Discussion was had regarding maps for pre-statutory vested stockwater rights and whether GPS coordinates would be adequate as opposed to a map prepared by a water rights surveyor?

15. Should the State Engineer consider the amount of water used by domestic wells in analyzing the quantity of water appropriated in a basin?
16. Fracking.
17. Discussion was had as to what happens to a water right if a farmer does not want to farm for a couple of years.
18. Application maps, discussion of using GPS vs. bearing and tie.
19. What are the water assessments charged on property tax used for?
20. It was suggested the State Engineer require all groundwater wells in basins that could affect the Humboldt River be metered.
21. Is the use of all surface water measured?
22. Concerns were raised regarding the new U.S. Forest Service proposed directive on groundwater management.
23. What is the State Engineer's position on wild horses and burrows? Are they wildlife?
24. NRS § 533.503 – needs to be amended to allow leasees to apply for stockwater rights.
25. It was suggested that meters should be mandated on all wells.
26. How is the State Engineer addressing a changing climate and its effect on water supplies?
27. Concern was raised about protection of domestic well users.
28. The opinion was expressed that in addressing climate change and drought there should be a mechanism to over allocate resources to municipalities for protection of their ability to deliver water.
29. Should the State Engineer reevaluate all the perennial yield calculations in light of climate change?
30. Should a higher duty of water be allowed per acre of irrigation in recognition of warmer temperatures and longer seasons of use?
31. The opinion was expressed that the State should encourage more conversations like these listening sessions and that there is a real opportunity for leadership at the State level that is not being taken advantage of at this time.
32. The opinion was expressed that the State needs serious, comprehensive water planning and a priority should be that all portions of the state must thrive.