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Nevada Committee begins 'treacherous journey' to look at water law

An interim legislative committee looking at fixes for Nevada water law began meeting this week with a primer and a caution.

“We are about to embark on a treacherous journey,” Jason King, state engineer, told the five-member Subcommittee to Study Water at its initial meeting Monday in Las Vegas.

The Legislative Commission’s subcommittee is meeting six times during the interim to study one of the state’s most contentious issues and then submit up to five bill draft requests to the 2017 Legislature.

Those BDRs must be meticulously crafted, King said, in order to gain support, get passed and stand up in court.

King gave the subcommittee an overview of Nevada water resources and law, including a look at a few bills that were introduced but did not pass during the 2015 legislative session.

One of those bills, Senate Bill 81, sought to give the state engineer the authority to limit, rather than stop, pumping by domestic wells in stressed basins designated as critical management areas.

“There are 11,000 domestic wells in Pahrump that would be cut off completely in a strict reading of water law,” said King.

That’s because state water law is based on priority, meaning the state engineer must totally shut off junior water rights holders while senior rights holder retain their full rights, rather than allowing the engineer to just reduce water use across the board in a basin.

Domestic well owners do not technically have water rights, but their wells, which can only be drilled with permission from the state engineer's office, have priority dates based on when the wells are drilled and are almost always the most junior in the state.

King would like the authority to be able to cutoff, if necessary, domestic well owners outside water use, such as lawn watering, while allowing them to continue to pump for indoor water consumption.

"This domestic well issue is the biggest issue in the state," said Sen. Pete Goicoechea, R-Eureka, chairman of the water subcommittee.

King said Pahrump is the "poster child" for the domestic well problem. The Nye County town has 22 percent of the state's domestic wells and some of the worst density. King said in some areas there are 450 wells per square mile.

King said he would also like to see greater flexibility in working with stakeholders in distressed basins so they can create their own groundwater management plan.

He said out of 256 basins in Nevada, there are 53 basins where water is severely over-appropriated.

Two officials from the U.S. Geological Survey, which conducts research and provides data on the country's water resources, gave a presentation on groundwater that emphasized that the state needs to treat groundwater and surface water as the same resource.

In the past, groundwater and surface water were treated as two separate sources of water, but pumping groundwater can also reduce flow in nearby streams and rivers, showing the two are inextricably linked.

"The state engineer has great understanding of Nevada water resources and is moving toward the sustainable concept, but he has to do so under current law which recognizes surface and groundwater as separate water," said Kip Allander, groundwater specialist, USGS.

"Do we need a law that says ground and surface water are the same thing?" asked Sen. Joseph Hardy, R-Boulder City, a subcommittee member.

"I don't know, but it does make it challenging for the state engineer to manage," said Allander.

Other issues that came up included the use it or lose it aspect of state law which says if water is not put to beneficial use in a certain timeframe the rights holder can lose those rights.

The doctrine provides an incentive to waste water in order to retain your rights and King suggested a conservation credit for rights holders in distressed basins so they could v water without the threat of losing their rights.

He also said his office handles 400 requests for extensions to those beneficial-use deadlines every month, but that creates another set of problems.

“Another huge issue is the extension process,” said Goicoechea. “Some extensions are close to 20 years. I want the committee to understand you cut someone off while someone else hasn’t used their right in 20 years.”

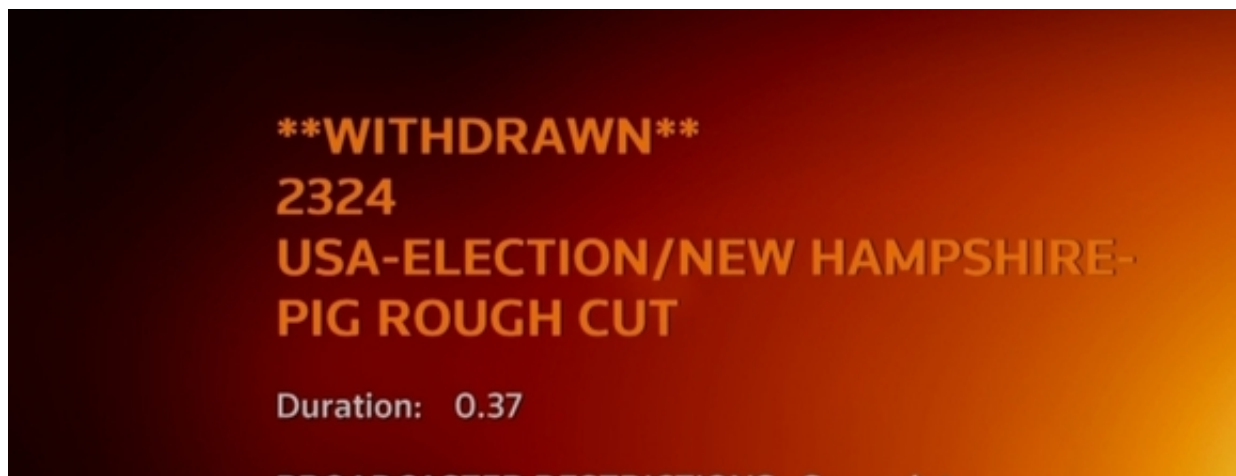
Senator Aaron Ford, D-Las Vegas, Assemblywoman Maggie Carlton, D-Las Vegas and Assemblyman James Oscarson, R-Pahrump, sit on the subcommittee in addition to Goicoechea and Hardy.

The Subcommittee to Study Water’s next meeting is March 9 in Winnemucca.

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