

Nev. fails to create rules to deal with drought

By Anne Knowles

CARSON CITY – Nevada could pay a price for not making any substantive changes to its water laws during the 2015 legislative session.

The possibility of a special session for the Legislature was discussed at the first meeting of the Nevada Drought Forum, a panel created in April by executive order of Gov. Brian Sandoval and consisting of several state agency heads and other water authorities.

Lynn Hettrick, deputy director of the Nevada Department of Agriculture and a former Nevada assemblyman, said a special session should not be ruled out if the forum determines new statutes are needed immediately to address the ongoing drought.

“We don’t know if we need to do something on an emergency basis,” Hettrick told *Lake Tahoe News*. “It’s a long time to wait for the next session and we have to at least be open to that possibility.”



The Carson River supplies water to farms and ranches in Nevada. Photos/Anne Knowles

The forum participants are conducting several meetings, including a three-day summit in September, and are tasked with delivering a report to the governor by Nov. 1 outlining actions the state should consider in order to deal with what is now a four-year drought.

“The bar would have to be really high for a special session, but never say never,” Leo Drozdoff, director of Nevada Department of Conservation and Natural Resources, who chairs the forum, told *Lake Tahoe News*.

The 2015 legislative session ended June 1 with neither bill requested by the Nevada Department of Water Resources becoming law. Even a separate bill sponsored by state Sen. Pete Goicoechea, R-Eureka, chair of the Senate Government Affairs Committee and the Legislature’s respected water expert, failed to pass.

Jason King, state engineer, told *Lake Tahoe News* he was “blindsided” by the opposition to the bills.

King said the water department spent the two years between

sessions meeting with all the stakeholders who would be most affected by any changes to existing law, trying to craft acceptable legislation.

That included domestic well owners in Pahrump, a town about 65 miles west of Las Vegas, and farmers in Eureka County's Diamond Valley, where basins are drying up due to overappropriation and overpumping. Both were the targets of Senate Bill 81, a bill making changes to critical management areas.

Critical management areas are a designation created by law in 2011 in which either by order of the state engineer or petition of the majority of the water rights holders a water management plan is mandated for a distressed basin.

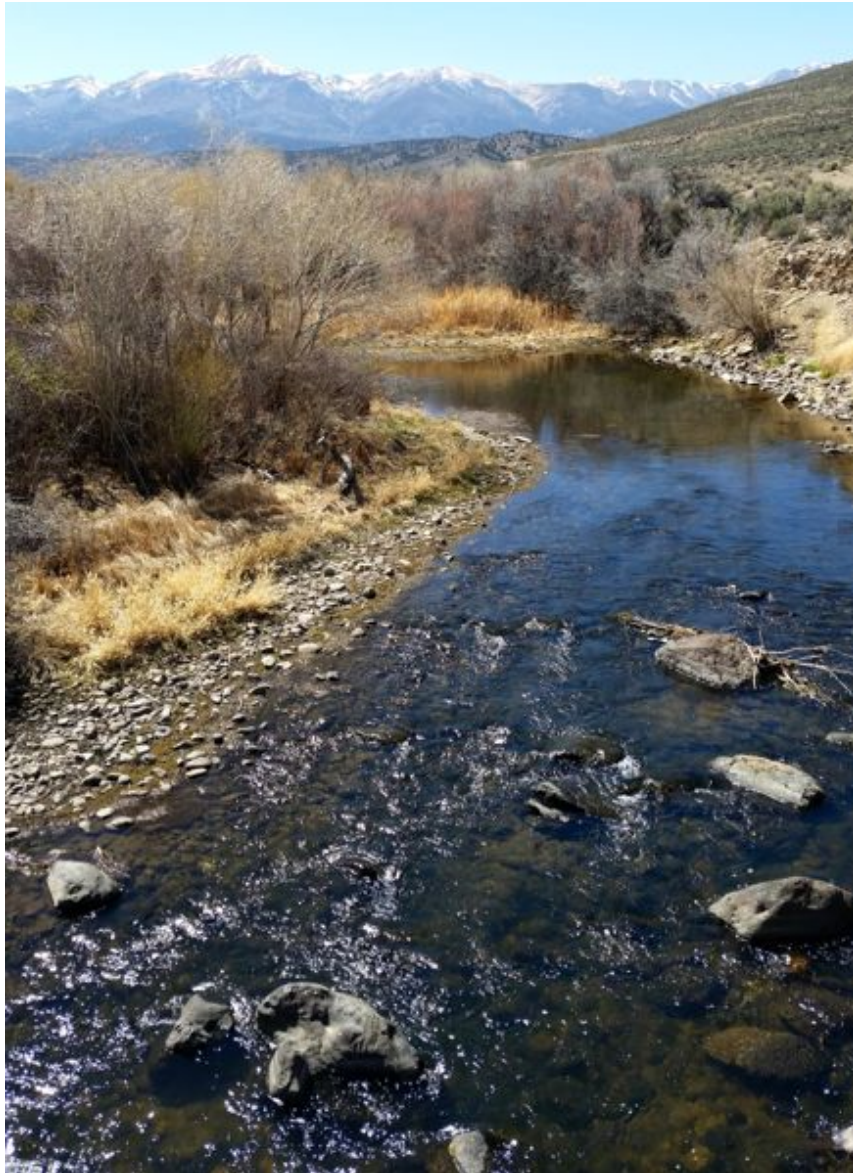
SB81 proposed to give the state engineer the authority to limit the quantity of water that may be withdrawn from domestic wells in a designated basin. Currently, domestic well owners do not need water rights or a permit but they are limited to pumping 2 acre-feet of water annually. During one of several workshops on the bill, it was suggested that under the new law the state engineer might temporarily reduce that to half an acre-foot because that is what the average household consumes.

That drew immediate opposition from the domestic well owners as well as water rights holders, who also could be restricted by SB81.

"Since SB81 was made public, water users, particularly in one basin we have been working in, have accused our office of using this bill as a 'power grab'," said King, during his testimony to the Senate Government Affairs Committee. "I strongly disagree. This bill is directly in response to their concerns."

The office's goal, King said, is to have a more flexible way to limit water users where water is being overpumped. Right

now, the state engineer can issue curtailment orders, but the orders are all or nothing.



The Walker River that farmers in Mason and Smith valleys rely on. Photo/Anne Knowles

In February, in its first-ever curtailment of groundwater, the state engineer ordered farmers in Smith and Mason valleys to cut groundwater pumping by half. (Their groundwater rights are a supplemental right used in conjunction with surface water rights on the Walker River.) The farmers formed Farmers Against Curtailment Order LLC and sued the state engineer. District Court Judge Leon Aberasturi granted a temporary

injunction.

"The judge might have been OK if we had cut off by priority," said King, rather than try to reduce usage by a percentage.

By priority means that water is allocated by seniority. Those with the oldest or most senior rights receive their full amount of water, those with newer or junior rights are cut off.

All or nothing.

That could be the next step in Pahrump or Diamond Valley. Indeed, on April 28, Sadler Ranch in Diamond Valley sued the state engineer, saying the office's failure for decades to curtail groundwater pumping by junior water rights holders in the valley has impinged on his senior water rights. The 3,000-acre ranch has rights dating from 1870.

The petition for curtailment, filed in the 7th Judicial District Court in Nevada, says pumping by junior appropriators has reduced the ranch's water by 90 percent.

The suit, citing the state engineer's data, says Diamond Valley has a perennial yield of 30,000 acre feet, which is the maximum amount of groundwater that can be pumped annually over the long term without depleting the aquifer.

But more than 130,000 acre feet of groundwater rights have been issued and in 2011, more than 96,000 acre feet of water was pumped, says the suit.

King said his office is examining what existing tools it has to use in Pahrump and Diamond Valley, which could including making the first designation of a critical management area.

"The biggest hammer we have that we never want to use is to manage by priority," said King. "The biggest trigger is if senior rights holders can't get their water."

Domestic wells, too, can be regulated by priority. Even though the wells don't need water rights, they do need permits to be drilled so each has a date that sets priority.

SB81 was the more disputed of the two bills. Senate Bill 65, a lengthy bill that primarily updated antiquated language in the state's century-old water law, went through workshops too and was eventually stripped of its most controversial sections, including a definition of perennial yield and restrictions on where domestic wells can be drilled. Even then the bill failed.

"There was a fear factor," said former Assemblyman Hettrick. "People looked at the bills and said what door is this going to open? Once you do this, what's next?"

Next for the Nevada Drought Forum are two meetings to get the perspective of water users. A meeting with tourism, mining and other business interests is set for July 14 in Las Vegas and a meeting with the state's two biggest water users, agriculture and municipalities, is scheduled for Aug. 19 in Carson City or Sparks.

The forum summit, likely somewhere in the state capital, is now planned for Sept. 21-23.