

## **Talking Points: Legal Uncertainties and Drought Response**

### **1. How has drought affected the livestock industry**

**From a range grass production stand point not much. Rangelands are in good condition and grass production for the past two years have actually been very good thanks to well timed spring and summer rains.**

**Pastures relying on snow pack and runoff are deficient and way below normal.**

**Stock water is an issue on many allotments.**

**Irrigation water for hay production is deficient due to the reduced snow pack.**

**A lot of legal uncertainties are present if this drought situation continues. Conflicts between users will intensify.**

- Surface water sources with senior water rights may be impacted by junior groundwater pumping. As surface water flows decline, surface water users may switch to groundwater and the increased pumping levels could impact other groundwater users. More straws in the ground.
- While conflicts between water users will first be addressed by the State Engineer's office, eventually the issues will reach the court system. Many of the issues related to water use conflicts will concern areas of law that have not been interpreted or enforced before. The effects of drought will test the completeness and complexity of Nevada's water law.
- Steps should be taken now to improve the clarity of certain key aspects of Nevada's water law so that all water users can be treated fairly when they are faced with responding to water supply limitations caused by drought.
- The areas of law that should be clarified are:
  - Recognizing in statute that impacts to other water rights is an acceptable part of sharing a water resource, but that when an impact rises to a level that cannot be mitigated, a conflict exists and the prior appropriation system prevails.
  - Monitoring, management, and mitigation plans ("3M Plans") that rely on adaptive management principles are appropriate tools for the State Engineer to use and consider, both in deciding whether to grant a water rights application and in managing competing water uses and protecting the environment.
  - The State Engineer has the inherent authority to require 3M Plans, but the legislature can confirm this and add detailed requirements like the appropriate

contents of a 3M Plan and the timeframe for setting mitigation triggers, including whether performance bonds should be required.

- When mitigation is necessary, water right users should expect to receive the same amount of water, in the same place, and at the same time as provided for in their water right, but do not have an entitlement to water from a specific source.
  - In a drought, conservation should be rewarded and not punished by the “use it or lose it” system. Conserved water can be used by junior water users and the junior water rights retired in order to benefit the system.
- Legislative ambiguities lead to economic uncertainties.
  - The Nevada Drought Forum should be used to identify specific statutes that can be amended and clarified, and the Governor should consider these recommendations in the bill draft request process for the 2017 legislative session.