Division releases curtailment orders for Mason, Smith

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By: Keith Trout

The Nevada Division of Water Resources/State Engineer released official curtailment orders for Smith Valley and Mason Valley on Oct. 28.

The curtailment order is the same or similar to the proposed curtailment order conditions the State Engineer’s Office released in late August, including at public meetings held Aug. 27 and 28 in Mason Valley and Smith Valley.

The orders dated and signed by King on Oct. 28 are Order #1267, “Curtailing the use of groundwater rights that are supplemental to surface water rights within the Smith Valley hydrographic basin (107) Nevada,” and Order #1268 “Curtailing the use of groundwater rights that are supplemental to surface water rights within the Mason Valley hydrographic basin (108) Nevada.”

Local rancher Darrell Pursel and the others — local accountant and water rights owner Jeff Rife and attorneys Brad Johnston, who represents several local farming interests, including Peri & Sons Farms, and Paul Taggart, who represents Farmers Against Curtailment Order — informally tasked by the State Engineer to come up with an alternative to the curtailment order for Mason and Smith valleys continue working toward that end.

Pursel, the president of the Lyon County Farm Bureau as well as a local rancher, spoke in a phone interview earlier last week about the efforts, which includes an idea thus far that was “acceptable to the state,” he said, after a meeting with State Engineer Jason King and some staff, including deputy administrator Rick Felling, in mid-October.

He knew the curtailment order was due to come out soon but felt they could continue on their proposal and continue negotiations, feeling the curtailment doesn’t go into effect until the April 1 streamflow forecasts are known.

The curtailment for Smith Valley consists of a 75 percent curtailment if the percent of median river flow as projected on April 1 is 40 percent (with a May 5, 1960, priority date, for those equal and junior to this); and an 80 percent curtailment if the April 1 percent of median river flow is 20 percent (with March 21, 1960, priority date, for those equal and junior to this).

This could be adjusted for both valleys if the June 1 streamflow forecast from the USDA Natural Resources Conservation Service is higher that April’s, to adjust the curtailment downward, using the same table.
The curtailment order for Mason Valley calls for a 25 percent curtailment if the estimated streamflow is 60 percent (for rights dated and junior to a Dec. 4, 1973, priority date); a 50 percent curtailment for estimated flow of 50 percent (rights equal or junior to a Feb. 24, 1961, priority date); a 40 percent curtailment for estimated flow of 40 percent (June 15, 1960, priority date); and a 70 percent curtailment.

If the percent of forecast river flow is between the figures in both orders, the percent curtailment would be interpolated, the order says. An example for Smith Valley given is that a forecast of a 30 percent of average flow would require a curtailment of 77.5 percent; while the Mason Valley example is if there is a 30 percent forecast river flow of average, the curtailment would be 67.5 percent.

After the public hearing for the proposed curtailment order in early October, the State Engineer met with those attending afterwards and it was decided the four named above would work on an alternative to the state engineer’s curtailment plan to present to King. A group of Smith Valley water users, including Steven Fulstone, are working on a similar effort, but attempts to contact them for information was unsuccessful.

Pursel said the State Engineer’s staff was open to the idea, although no figures were presented yet and they are working through it now. He said now the group is trying to see if the local water users would accept the proposal, but he said those contacted had been receptive, but that could take some time, probably a matter of a few months.

“It’s a matter of coming up with a plan that works for everybody,” Pursel said.

He said the initial proposal is to have a curtailment of sorts in good water years to help the aquifer recover more, and in return have a smaller curtailment on bad water years. Pursel said they don’t pump the well as much in wet years anyway.

The initial proposed option was something like if there is a 20 percent streamflow forecast, there might be a 20 percent curtailment, or if there is 45 to 50 percent streamflow forecast, he said, with about a 45 to 50 percent curtailment.

This curtailment is for one year and the State Engineer said it would be reevaluated each year, but Pursel said the local proposal is for instead of a “one-year fix” to work for a long-term fix, whether three, five or 10 years, “depending on who you talk to.”

He said they also want some kind of checks and balances in the curtailment, so if the aquifer is doing well, there is less curtailment, and vice versa.

“We’ll try and come up with an agreement,” he said, but noted it is complex.

He said once they had a plan or option with consensus they would take it back to the State Engineer’s Office. “We’re just trying to get everybody on board.”

The listed conclusions of law in the orders are similar and they are:
Groundwater is being depleted (in each basin) and this order is made pursuant to NRS 534.120(1) as being essential for the welfare of the area involved;

Supplemental groundwater rights (in each) were issued pursuant to the system yield of the basin and are considered to be a class of water rights that are subordinate to primary, stand-alone water rights;

Pursuant to NRS 534.120(2), the State Engineer is authorized to designate preferred uses of water within designated basins from which water is being depleted.

The State Engineer declares in (each valley) that supplemental groundwater rights are a nonpreferred use;

The State Engineer concludes that continued pumping of supplemental groundwater rights during the continuing drought will result in an unreasonable lowering of the static water level, will endanger the longterm health of the aquifer, will threaten to conflict with existing rights and will threaten to prove detrimental to the public interest;

Nevada water law requires that curtailment of water rights be by priority of right; and,

The State Engineer concludes that the curtailment of nonpreferred supplemental irrigation water rights by priority is required to protect the integrity and continued water supply of the basin.

The State Engineer has cited the fact the region is in the midst of “and unusually severe four-year drought” and groundwater pumpage in the past three years has increased over the previous year, until this past summer, and resulted in what it said was “a significant and unsustainable depletion of the groundwater aquifer” in the valleys.

After a 50 percent curtailment of supplemental well pumping was included in an order in early February for the two local valleys, a lawsuit filed by Farmers Against Curtailment Order resulted in an injunction halting that curtailment.

After that, the State Engineer’s Office contracted with Desert Research Institute in May to conduct model simulations using DRI’s existing groundwater flow models of the two valleys, which were used to predict what percentage of junior supplemental groundwater rights would need to be curtailed based on predicted inflows of the Walker River.

The Nevada Division of Water Resources/State Engineer is responsible for administering and enforcing Nevada water law, which includes the adjudication and appropriation of groundwater and surface water in the state. The State Engineer is the appointed administrative head of this division, whose office was created by the Nevada Legislature in 1903.

It was not until the passage of the Nevada General Water Law of 1913 that the Nevada Division of Water Resources (or its predecessor names) was granted jurisdiction over all wells tapping artesian water or water in definable underground aquifers.

Nevada water law is based on two fundamental concepts: prior appropriation and beneficial use. Prior appropriation, also known as “first in time, first in right” allows for the orderly use of the state’s water resources by granting priority to senior water rights, according to the division. A report on Nevada water law stated, “This concept ensures the senior uses are protected, even as new uses for water are allocated.”