
ASSEMBLY BILL NO. 73—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE DIVISION OF WATER RESOURCES)

DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the appropriation of water for a beneficial use. (BDR 48-467)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to water; authorizing the State Engineer or any assistant or authorized agent of the State Engineer to enter certain premises to investigate and carry out the duties of the State Engineer; requiring the State Engineer to cancel a permit to appropriate water for a beneficial use if the holder of the permit fails to file certain information within a certain period after the date of the notice to file that information; revising provisions relating to the forfeiture of certain water rights; removing provisions requiring the State Engineer to adopt regulations establishing a program to allow a public water system to receive a credit for adding a new customer to the system; authorizing a public water system to receive such a credit under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, if an owner or proprietor appropriates underground water
2 through the use of a well, the State Engineer or any assistant or authorized agent of
3 the State Engineer is authorized to enter the premises of the owner or proprietor
4 where such a well is situated to investigate and carry out the duties of the State
5 Engineer in the administration of the provisions of chapter 534 of NRS governing
6 underground water and wells. (NRS 534.130) However, existing law does not
7 confer similar authority upon the State Engineer or any assistant or authorized
8 agent of the State Engineer to enter the premises of an owner or proprietor for the



9 purpose of carrying out the provisions of chapter 533 of NRS governing vested
10 water rights and rights to appropriate public water for a beneficial use. **Section 1**
11 of this bill specifically confers such authority upon the State Engineer or any assistant
12 or authorized agent of the State Engineer for the purpose of carrying out the
13 provisions of chapter 533 of NRS.

14 Existing law requires the State Engineer to notify a holder of a permit to
15 appropriate water for a beneficial use if the holder of the permit fails to file with the
16 State Engineer proof of an application of water to the beneficial use and any
17 required map for that appropriation. Existing law further provides that, if the holder
18 of the permit fails to file the required affidavit and map with the State Engineer
19 within 30 days after the mailing of the notice, the State Engineer is required to
20 cancel the permit. (NRS 533.410) **Section 2** of this bill requires the State Engineer
21 to cancel the permit if the holder of the permit fails to file the required affidavit and
22 map within 30 days after the date of the notice rather than 30 days after the mailing
23 of the notice.

24 Existing law provides for the forfeiture of a right to use beneficially all or any
25 part of underground water for the purpose for which the underground water is
26 acquired or claimed. Existing law also authorizes the State Engineer to extend the
27 amount of time required to work the forfeiture. (NRS 534.090) **Section 3** of this bill
28 provides that groundwater rights for which a certificate of beneficial use has been
29 issued, instead of groundwater rights held under a permit, are subject to the
30 forfeiture procedure. Permitted rights are lost through the process of cancellation.
31 (NRS 533.395) In addition, **section 3** requires the State Engineer to declare a water
32 right forfeited for nonuse if the State Engineer grants an extension of time to the
33 owner of the water right and, before the expiration of that extension of time, proof
34 of resumption of beneficial use or another request for an extension of time is not
35 filed in the Office of the State Engineer.

36 Existing law requires the State Engineer to adopt regulations establishing a
37 program that allows a public water system to receive a credit for adding a new
38 customer to the public water system in any area that the State Engineer has
39 designated as a groundwater basin and in which the State Engineer has denied one
40 or more applications for a municipal use of groundwater. Before adopting those
41 regulations, existing law requires the State Engineer to hold a public hearing within
42 the basin to which the regulations will apply or within the county in which a major
43 portion of the groundwater basin lies. (NRS 534.350) **Section 4** of this bill deletes
44 the requirement for the State Engineer to adopt those regulations and to hold a
45 public hearing before adopting the regulations. In lieu of adopting the regulations,
46 **section 4** sets forth directly in NRS the requirements for a public water system to
47 receive a credit for adding a new customer to the public water system in a
48 designated groundwater basin.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 533 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *The State Engineer or any assistant or authorized agent of the*
4 *State Engineer may enter the premises of any owner or proprietor*
5 *where any water right or water user is situated at any reasonable*
6 *hour of the day to investigate and carry out the duties of the State*
7 *Engineer pursuant to this chapter.*



1 **Sec. 2.** NRS 533.410 is hereby amended to read as follows:

2 533.410 If any holder of a permit from the State Engineer fails,
3 before the date set for filing in the permit or the date set by any
4 extension granted by the State Engineer, to file with the State
5 Engineer proof of application of water to beneficial use, and the
6 accompanying map, if a map is required, the State Engineer shall
7 advise the holder of the permit, by registered or certified mail, that
8 the permit is held for cancellation. If the holder, within 30 days after
9 the ~~[mailing]~~ *date* of ~~[this]~~ *the* notice, fails to file with the State
10 Engineer the required affidavit and map, if a map is required, or an
11 application for an extension of time to file the instruments, the State
12 Engineer shall cancel the permit. For good cause shown, upon
13 application made before the expiration of the 30-day period, the
14 State Engineer may grant an extension of time in which to file the
15 instruments.

16 **Sec. 3.** NRS 534.090 is hereby amended to read as follows:

17 534.090 1. Except as otherwise provided in this section,
18 failure for 5 successive years after April 15, 1967, on the part of the
19 holder of any right, whether it is an adjudicated right, an
20 unadjudicated right or a ~~[permitted]~~ right ~~[]~~ *for which a certificate*
21 *has been issued pursuant to NRS 533.425*, and further whether the
22 right is initiated after or before March 25, 1939, to use beneficially
23 all or any part of the underground water for the purpose for which
24 the right is acquired or claimed, works a forfeiture of both
25 undetermined rights and determined rights to the use of that water to
26 the extent of the nonuse. If the records of the State Engineer or any
27 other documents specified by the State Engineer indicate at least 4
28 consecutive years, but less than 5 consecutive years, of nonuse of all
29 or any part of a water right which is governed by this chapter, the
30 State Engineer shall notify the owner of the water right, as
31 determined in the records of the Office of the State Engineer, by
32 registered or certified mail that the owner has 1 year after the date of
33 the notice in which to use the water right beneficially and to provide
34 proof of such use to the State Engineer or apply for relief pursuant
35 to subsection 2 to avoid forfeiting the water right. If, after 1 year
36 after the date of the notice, proof of *resumption of* beneficial use is
37 not ~~[sent to]~~ *filed in* the *Office of the* State Engineer, the State
38 Engineer shall, unless the State Engineer has granted a request to
39 extend the time necessary to work a forfeiture of the water right,
40 declare the right forfeited within 30 days. Upon the forfeiture of a
41 right to the use of groundwater, the water reverts to the public and is
42 available for further appropriation, subject to existing rights. If,
43 upon notice by registered or certified mail to the owner of record
44 whose right has been declared forfeited, the owner of record fails to
45 appeal the ruling in the manner provided for in NRS 533.450, and



1 within the time provided for therein, the forfeiture becomes final.
2 The failure to receive a notice pursuant to this subsection does not
3 nullify the forfeiture or extend the time necessary to work the
4 forfeiture of a water right.

5 2. The State Engineer may, upon the request of the holder of
6 any right described in subsection 1, extend the time necessary to
7 work a forfeiture under that subsection if the request is made before
8 the expiration of the time necessary to work a forfeiture. The State
9 Engineer may grant, upon request and for good cause shown, any
10 number of extensions, but a single extension must not exceed 1 year.
11 In determining whether to grant or deny a request, the State
12 Engineer shall, among other reasons, consider:

13 (a) Whether the holder has shown good cause for the holder's
14 failure to use all or any part of the water beneficially for the purpose
15 for which the holder's right is acquired or claimed;

16 (b) The unavailability of water to put to a beneficial use which is
17 beyond the control of the holder;

18 (c) Any economic conditions or natural disasters which made
19 the holder unable to put the water to that use;

20 (d) Any prolonged period in which precipitation in the basin
21 where the water right is located is below the average for that basin
22 or in which indexes that measure soil moisture show that a deficit in
23 soil moisture has occurred in that basin; and

24 (e) Whether the holder has demonstrated efficient ways of using
25 the water for agricultural purposes, such as center-pivot irrigation.

26 ➤ The State Engineer shall notify, by registered or certified mail,
27 the owner of the water right, as determined in the records of the
28 Office of the State Engineer, of whether the State Engineer has
29 granted or denied the holder's request for an extension pursuant to
30 this subsection. *If the State Engineer grants an extension pursuant*
31 *to this subsection and, before the expiration of that extension,*
32 *proof of resumption of beneficial use or another request for an*
33 *extension is not filed in the Office of the State Engineer, the State*
34 *Engineer shall declare the water right forfeited within 30 days*
35 *after the expiration of the extension granted pursuant to this*
36 *subsection.*

37 3. If the failure to use the water pursuant to subsection 1 is
38 because of the use of center-pivot irrigation before July 1, 1983, and
39 such use could result in a forfeiture of a portion of a right, the State
40 Engineer shall, by registered or certified mail, send to the owner of
41 record a notice of intent to declare a forfeiture. The notice must
42 provide that the owner has at least 1 year after the date of the notice
43 to use the water beneficially or apply for additional relief pursuant
44 to subsection 2 before forfeiture of the owner's right is declared by
45 the State Engineer.



1 4. A right to use underground water whether it is vested or
2 otherwise may be lost by abandonment. If the State Engineer, in
3 investigating a groundwater source, upon which there has been a
4 prior right, for the purpose of acting upon an application to
5 appropriate water from the same source, is of the belief from his or
6 her examination that an abandonment has taken place, the State
7 Engineer shall so state in the ruling approving the application. If,
8 upon notice by registered or certified mail to the owner of record
9 who had the prior right, the owner of record of the prior right fails to
10 appeal the ruling in the manner provided for in NRS 533.450, and
11 within the time provided for therein, the alleged abandonment
12 declaration as set forth by the State Engineer becomes final.

13 **Sec. 4.** NRS 534.350 is hereby amended to read as follows:

14 534.350 1. ~~{The State Engineer shall adopt regulations~~
15 ~~establishing a program that allows a}~~ A public water system ~~{to}~~
16 *may* receive credits, as provided in this section, for the addition of
17 new customers to the system. The ~~{program}~~ *granting of a credit*
18 *pursuant to this section* must be limited to public water systems in
19 areas:

20 (a) Designated as groundwater basins by the State Engineer
21 pursuant to the provisions of NRS 534.030; ~~{and}~~

22 (b) In which the State Engineer has denied one or more
23 applications for any municipal uses of groundwater ~~{.}~~; *and*

24 *(c) For which the State Engineer has issued an order for*
25 *granting a credit pursuant to this section.*

26 2. ~~{Before}~~ *At least 30 days before* the State Engineer ~~{adopts~~
27 ~~any regulations}~~ *issues an order granting a credit* pursuant to this
28 section ~~{regarding any particular groundwater basin, the State~~
29 ~~Engineer shall hold a public hearing:~~

30 ~~—(a) Within the basin to which the regulations will apply if~~
31 ~~adequate facilities to hold a hearing are available within that basin;~~
32 ~~or~~

33 ~~—(b) In all other cases, within the county where the major portion~~
34 ~~of that basin lies;~~

35 ~~→ to take testimony from any interested persons regarding the~~
36 ~~proposed regulations.}~~ *, the public water system requesting the*
37 *credit shall submit to the State Engineer a written confirmation*
38 *indicating that each customer of the public water system has been*
39 *notified of the request by the public water system. The written*
40 *confirmation must include the response, if any, the public water*
41 *system received from each of those customers.*

42 3. ~~{Upon adoption of the regulations required by this section~~
43 ~~regarding a particular groundwater basin, a}~~ A public water system
44 which provides service in ~~{that}~~ *a groundwater* basin is entitled to



1 receive a credit for each customer who is added to the system ~~[after~~
2 ~~the adoption of those regulations]~~ and:

3 (a) Voluntarily ceases to draw water from a domestic well
4 located within that basin; or

5 (b) Is the owner of a lot or other parcel of land, other than land
6 used or intended solely for use as a location for a domestic well,
7 which:

8 (1) Is located within that basin;

9 (2) Was established as a separate lot or parcel before July 1,
10 1993;

11 (3) Was approved by a local governing body or planning
12 commission for service by an individual domestic well before
13 July 1, 1993; and

14 (4) Is subject to a written agreement which was voluntarily
15 entered into by the owner with the public water system pursuant to
16 which the owner agrees not to drill a domestic well on the land and
17 the public water system agrees that it will provide water service to
18 the land. Any such agreement must be acknowledged and recorded
19 in the same manner as conveyances affecting real property are
20 required to be acknowledged and recorded pursuant to chapter 111
21 of NRS.

22 4. If a county requires, by ordinance, the dedication to the
23 county of a right to appropriate water from a domestic well which is
24 located on a lot or other parcel of land that was established as a
25 separate lot or parcel on or after July 1, 1993, the county may, by
26 relinquishment to the State Engineer, allow the right to appropriate
27 water to revert to the source of the water. The State Engineer shall
28 not accept a relinquishment of a right to appropriate water pursuant
29 to this subsection unless the right is in good standing as determined
30 by the State Engineer. A right to appropriate water that is dedicated
31 and relinquished pursuant to this subsection:

32 (a) Remains appurtenant only to the parcel of land in which it is
33 located as specified on the parcel map; and

34 (b) Maintains its date of priority established pursuant to
35 NRS 534.080.

36 5. If an owner of a parcel of land specified in subsection 4
37 becomes a new customer of a public water system for that parcel of
38 land, the public water system is entitled to receive a credit in the
39 same manner as the addition of any other customer to the public
40 water system pursuant to this section.

41 6. The State Engineer may require a new customer, who
42 voluntarily ceases to draw water from a domestic well as provided
43 in paragraph (a) of subsection 3 or whose right to appropriate water
44 is dedicated pursuant to subsection 4, to plug that well.



- 1 7. A credit granted pursuant to this section:
2 (a) Must be sufficient to enable the public water system to add
3 one service connection for a single-family dwelling to the system,
4 except that the credit may not exceed the increase in water
5 consumption attributable to the additional service connection or
6 2 acre-feet per year, whichever is less.
7 (b) May not be converted to an appropriative water right.
8 8. This section does not:
9 (a) Require a public water system to extend its service area.
10 (b) Authorize any increase in the total amount of groundwater
11 pumped in a groundwater basin.
12 (c) Affect any rights of an owner of a domestic well who does
13 not voluntarily comply with the provisions of this section.
14 9. As used in this section:
15 (a) "Domestic well" means a well used for culinary and
16 household purposes in:
17 (1) A single-family dwelling; and
18 (2) An accessory dwelling unit for a single-family dwelling if
19 provided for in an applicable local ordinance,
20 including the watering of a garden, lawn and domestic animals
21 and where the draught does not exceed 2 acre-feet per year.
22 (b) "Public water system" has the meaning ascribed to it in
23 NRS 445A.840.
24 **Sec. 5.** This act becomes effective upon passage and approval.



