

ASSEMBLY BILL NO. 265—ASSEMBLYMEN ANGLE AND HOLCOMB

MARCH 21, 2005

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to domestic wells.
(BDR 48-1271)

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

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

AN ACT relating to domestic wells; revising the provisions governing permits for the development and use of underground water from domestic wells; providing civil liability for certain violations of such a permit; providing causes of action against the State Engineer and the State of Nevada under certain circumstances if an owner of a domestic well suffers a reduction in the amount of underground water available for diversion; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law authorizes the State Engineer to issue permits to appropriate
- 2 underground water from a domestic well. (NRS 534.050)
- 3 This bill requires an applicant for a permit for the development and use of
- 4 underground water from a domestic well to include in the application certain
- 5 information concerning the proposed drawdown and proposed lowering of the static
- 6 water level of the basin that would result from the use of the well.
- 7 This bill requires the State Engineer to make that information available for
- 8 public comment and provide notice of each application for a domestic well to not
- 9 less than 10 percent of the water users in the affected basin. The State Engineer
- 10 must prescribe the maximum drawdown and maximum lowering of the water level
- 11 allowed under the permit. This bill requires the State Engineer to survey all
- 12 domestic wells in the basin and collect information on the static water level of each
- 13 domestic well before he issues or denies a permit for a domestic well. The State
- 14 Engineer may use that information to deny an application for a permit for a
- 15 domestic well.
- 16 This bill provides that if the owner of a domestic well exceeds the limits
- 17 prescribed in the permit, any affected owner of a domestic well may bring an action
- 18 to recover damages. If the owner of a domestic well incurs damages caused by the



19 use of underground water by a person who is issued a permit, the owner may bring
20 an action against the State Engineer to recover his damages. If the owner of a
21 domestic well incurs damages as a result of the diversion of underground or surface
22 waters by a water purveyor, the owner may bring an action against the State to
23 recover his damages.

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

1 **Section 1.** Chapter 534 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2. 1.** *An application for a permit for the development*
4 *and use of underground water from a domestic well must include,*
5 *without limitation, a description of the proposed drawdown and*
6 *proposed lowering of the static water level of the basin as a result*
7 *of the use of underground water from the domestic well.*

8 **2.** *The State Engineer shall make available for public*
9 *comment the information in an application for a permit for a*
10 *domestic well relating to the proposed drawdown and proposed*
11 *lowering of the static water level of the basin. The State Engineer*
12 *shall provide notice of the application to not less than 10 percent*
13 *of the appropriators of record in the Office of the State Engineer*
14 *in the basin or portion thereof affected by the application.*

15 **3.** *If the State Engineer grants a permit for the development*
16 *and use of underground water from a domestic well, the permit*
17 *must include, without limitation, provisions prescribing the*
18 *maximum drawdown and maximum lowering of the static water*
19 *level of the basin allowed as a result of the use of underground*
20 *water from the domestic well.*

21 **4.** *If the use of underground water from a domestic well*
22 *causes the drawdown or lowering of the static water level in the*
23 *basin to exceed the maximum drawdown or maximum lowering of*
24 *the static water level prescribed in the permit:*

25 **(a)** *The owner of the domestic well shall decrease his use of*
26 *water from the well to the extent necessary to comply with the*
27 *permit; and*

28 **(b)** *Any person who, as a result of such use, suffers a*
29 *reduction in the amount of water he can divert through another*
30 *well may bring an action against the owner of the domestic well to*
31 *recover any damages resulting from the reduction.*

32 **5.** *An owner of a domestic well is not liable for damages*
33 *pursuant to subsection 4 if he establishes that the reduction was*
34 *due to drought rather than the use of underground water from the*
35 *domestic well in excess of the maximum drawdown or maximum*
36 *lowering of the static water level prescribed in the permit. To*



1 establish that drought caused the reduction, the owner must
2 establish that there has been a measurable depletion of 10 percent
3 or more in the static water level in the affected basin during the
4 10-year period immediately preceding the date on which the
5 reduction was suffered.

6 **Sec. 3. 1.** Before approving an application for a permit for
7 the development and use of underground water from a domestic
8 well, the State Engineer:

9 (a) Shall make an inventory of existing domestic wells in the
10 affected basin;

11 (b) Shall measure and record the static water level in all
12 existing domestic wells in the affected basin; and

13 (c) Shall evaluate the effect of the proposed domestic well on
14 the use of underground water by existing domestic wells in the
15 affected basin.

16 2. The State Engineer may deny an application for a permit
17 for the development and use of underground water from a
18 domestic well if he determines that the use of underground water
19 from the proposed well would cause a reduction in the amount of
20 water available for diversion to an owner of an existing domestic
21 well in the affected basin.

22 **Sec. 4. 1.** An owner of a domestic well who suffers a
23 reduction in the amount of underground water available for
24 diversion may, in the manner provided in NRS 41.031 to 41.039,
25 inclusive, bring an action against the State Engineer if the
26 reduction resulted from a decision by the State Engineer to issue a
27 permit for the development and use of underground water from
28 another domestic well in the affected basin. In an action to recover
29 damages under this section, the State Engineer bears the burden
30 of proof to establish that the reduction did not occur as the result
31 of the use of underground water from another domestic well for
32 which a permit has been issued by the State Engineer.

33 2. An owner of a domestic well who suffers a reduction in the
34 amount of underground water available for diversion may, in the
35 manner provided in NRS 41.031 to 41.039, inclusive, bring an
36 action against the State of Nevada if the reduction resulted from
37 the diversion of underground water or surface water by a water
38 purveyor. In an action to recover damages under this section, the
39 State Engineer bears the burden of proof to establish that the
40 reduction did not occur as the result of the diversion of
41 underground water or surface water by a water purveyor.

42 3. As used in this section, "water purveyor" means a public
43 entity created by or pursuant to the laws of this State which:

44 (a) Is engaged in:



- 1 *(1) The acquisition of water on behalf of, or the delivery of*
- 2 *water to, another water purveyor; or*
- 3 *(2) The retail delivery of water in this State; and*
- 4 *(b) Is not a member of another such public entity that is itself*
- 5 *engaged in the activities described in paragraph (a).*

