

Amendment No. 335

Senate Amendment to Senate Bill No. 274

(BDR 48-206)

Proposed by: Senate Committee on Natural Resources**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

| ASSEMBLY ACTION | | | | Initial and Date | | SENATE ACTION | | | | Initial and Date | |
|-----------------|--------------------------|------|--------------------------|------------------|--|---------------|--------------------------|------|--------------------------|------------------|--|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

WBD/TMC



Date: 4/15/2007

S.B. No. 274—Makes various changes to provisions governing the State Engineer.
(BDR 48-206)



SENATE BILL NO. 274—COMMITTEE ON NATURAL RESOURCES

(ON BEHALF OF THE LEGISLATIVE COMMISSION'S
COMMITTEE TO STUDY THE USE, MANAGEMENT,
AND ALLOCATION OF WATER RESOURCES)

MARCH 13, 2007

Referred to Committee on Natural Resources

SUMMARY—Makes various changes to provisions governing the State Engineer.
(BDR 48-206)

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

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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 water; expanding the purposes for which the State Engineer may adopt regulations; authorizing the State Engineer to impose administrative fines and to order payment of the costs of certain proceedings; authorizing the State Engineer to seek injunctive relief for certain violations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Pursuant to existing law, the State Engineer may make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred on him by law. (NRS 532.120) The penalty prescribed for the violation of a majority of the provisions set forth in chapters 533, 534, 535 and 536 of NRS is a misdemeanor. (NRS 533.480, 534.190, 535.110, 536.120)

Section 1 of this bill expands the provisions for which the State Engineer may adopt regulations to include chapters 534, 535 and 536 of NRS in addition to chapter 533 of NRS. **Sections 3, 7, 10 and 14** of this bill provide the State Engineer with the additional authority to impose, after notice and opportunity for a hearing, administrative fines, to require a person to replace certain unlawfully taken or wasted water, and to recover expenses incurred in investigating and stopping various water law violations.

Sections 4, 8, 11 and 15 of this bill authorize the State Engineer to seek injunctive relief to prevent a violation or continued violation of chapters 533, 534, 535 and 536 of NRS.

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

Section 1. NRS 532.120 is hereby amended to read as follows:

532.120 1. The State Engineer ~~is empowered to~~ *may* make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by law.

2. The State Engineer ~~[shall have power to make rules,]~~ *may adopt regulations,* not in conflict with law, governing the practice and procedure in all contests before his office, to ~~[insure]~~ *ensure* the proper and orderly exercise of the powers granted by law, and the speedy accomplishment of the purposes of ~~[chapter]~~ *chapters 533 , 534, 535 and 536* of NRS. Such rules of practice and procedure ~~[shall]~~ *must* be furnished to any person upon application therefor.

Sec. 2. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 ~~[and]~~ , 4 *and 4.5* of this act.

Sec. 3. *1. In addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter or any permit, certificate, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120 to:*

(a) Pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.

(b) In the case of an unauthorized use or willful waste of water in violation of NRS 533.460 or an unlawful diversion of water in violation of NRS 533.530, or any other violation of this chapter that, as determined by the State Engineer, results in an unlawful use, waste or diversion of water, replace not more than 200 percent of the water used, wasted or diverted.

2. If an administrative fine is imposed against a person pursuant to subsection 1 or the person is ordered to replace any water pursuant to that subsection, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney's fees.

3. An order imposing an administrative fine or requiring the replacement of water or the payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to NRS 533.450.

Sec. 4. *1. The State Engineer may seek injunctive relief in the appropriate court to prevent the continuance or occurrence of any act or practice which violates any provision of this chapter, or any permit, certificate, decision or order issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120.*

2. On a showing by the State Engineer that a person is engaged, or is about to engage, in any act or practice which violates or will violate any provision of this chapter, or any permit, certificate, decision or order issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120, the court may issue, without a bond, any prohibitory or mandatory injunction that the facts may warrant, including a temporary restraining order issued ex parte or, after notice and hearing, a preliminary or permanent injunction.

3. Failure to establish lack of an adequate remedy at law or irreparable harm is not a ground for denying a request for a temporary restraining order or injunction.

4. The court may require the posting of a sufficient performance bond or other security to ensure compliance with the court order within the period prescribed.

1 5. Any proceeding conducted or injunction or order issued pursuant to this
2 section is in addition to, and not in lieu of, any other penalty or remedy available
3 for a violation specified in this section.

4 Sec. 4.5. The State Engineer shall not carry out his duties pursuant to this
5 chapter in a manner that conflicts with any applicable provision of a decree or
6 order issued by a state or federal court, an interstate compact or an agreement to
7 which this State is a party for the interstate allocation of water pursuant to an act
8 of Congress.

9 Sec. 5. NRS 533.450 is hereby amended to read as follows:

10 533.450 1. Any person feeling himself aggrieved by any order or decision
11 of the State Engineer, acting in person or through his assistants or the water
12 commissioner, affecting his interests, when ~~{such}~~ the order or decision relates to
13 the administration of determined rights or is made pursuant to NRS 533.270 to
14 533.445, inclusive, *or section 3, 7, 10 or 14 of this act*, may have the same
15 reviewed by a proceeding for that purpose, insofar as may be in the nature of an
16 appeal, which ~~{shall}~~ *must* be initiated in the proper court of the county in which
17 the matters affected or a portion thereof are situated, ~~{,}~~ but on stream systems
18 where a decree of court has been entered, the action ~~{shall}~~ *must* be initiated in the
19 court that entered the decree. ~~{Such}~~ *The* order or decision of the State Engineer
20 ~~{shall be and remain}~~ *remains* in full force and effect unless proceedings to review
21 the same are commenced in the proper court within 30 days ~~{following}~~ *after* the
22 rendition of the order or decision in question and notice thereof is given to the State
23 Engineer as provided in subsection 3.

24 2. The proceedings in every case ~~{shall}~~ *must* be heard by the court, and
25 ~~{shall}~~ *must* be informal and summary, but full opportunity to be heard ~~{shall}~~ *must*
26 be had before judgment is pronounced.

27 3. No such proceedings may be entertained unless notice thereof, containing a
28 statement of the substance of the order or decision complained of, and of the
29 manner in which the same injuriously affects the petitioner's interests, has been
30 served upon the State Engineer, personally or by registered or certified mail, at his
31 office at the State Capital within 30 days following the rendition of the order or
32 decision in question. A similar notice ~~{shall}~~ *must* also be served personally or by
33 registered or certified mail upon the person ~~{or persons}~~ who may have been
34 affected by ~~{such}~~ the order or decision.

35 4. Where evidence has been filed with, or testimony taken before, the State
36 Engineer, a transcribed copy thereof, or of any specific part of the same, duly
37 certified as a true and correct transcript in the manner provided by law, ~~{shall}~~ *must*
38 be received in evidence with the same effect as if the reporter were present and
39 testified to the facts so certified. A copy of the transcript ~~{shall}~~ *must* be furnished
40 on demand, at actual cost, to any person affected by ~~{such}~~ the order or decision,
41 and to all other persons on payment of a reasonable amount therefor, to be fixed by
42 the State Engineer.

43 5. A bond ~~{shall}~~ *must* not be required except when a stay is desired, and the
44 proceedings provided for in this section are not a stay unless, within 5 days
45 ~~{following}~~ *after* the service of notice thereof, a bond is filed in an amount to be
46 fixed by the court, with sureties satisfactory to ~~{such}~~ the court, conditioned to
47 perform the judgment rendered in ~~{such}~~ the proceedings.

48 6. Costs ~~{shall}~~ *must* be paid as in civil cases brought in the district court,
49 except by the State Engineer or the State.

50 7. The practice in civil cases applies to the informal and summary character of
51 such proceedings, as provided in this section.

52 8. Appeals may be taken to the Supreme Court from the judgment of the
53 district court in the same manner as in other civil cases.

9. The decision of the State Engineer ~~[shall be]~~ *is* prima facie correct, and the burden of proof ~~[shall be]~~ *is* upon the party attacking the same.

10. Whenever it appears to the State Engineer that any litigation, whether now pending or hereafter brought, may adversely affect the rights of the public in water, he shall request the Attorney General to appear and protect the interests of the State.

Sec. 6. Chapter 534 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 and 8 of this act.

Sec. 7. *1. Except as otherwise provided in NRS 534.280, 534.310 and 534.330 and in addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter or any permit, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120 to:*

(a) Pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.

(b) In the case of an unlawful waste of water in violation of NRS 534.070 or any other violation of this chapter that, as determined by the State Engineer, results in an unlawful use, waste or diversion of water, replace not more than 200 percent of the water used, wasted or diverted.

2. If an administrative fine is imposed against a person pursuant to subsection 1 or the person is ordered to replace any water pursuant to that subsection, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney's fees.

3. An order imposing an administrative fine or requiring the replacement of water or payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to NRS 533.450.

Sec. 8. *1. The State Engineer may seek injunctive relief in the appropriate court to prevent the continuance or occurrence of any act or practice which violates any provision of this chapter, or any permit, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120.*

2. On a showing by the State Engineer that a person is engaged, or is about to engage, in any act or practice which violates or will violate any provision of this chapter, or any permit, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120, the court may issue, without a bond, any prohibitory or mandatory injunction that the facts may warrant, including a temporary restraining order issued ex parte or, after notice and hearing, a preliminary or permanent injunction.

3. Failure to establish lack of an adequate remedy at law or irreparable harm is not a ground for denying a request for a temporary restraining order or injunction.

4. The court may require the posting of a sufficient performance bond or other security to ensure compliance with the court order within the period prescribed.

5. Any proceeding conducted or injunction or order issued pursuant to this section is in addition to, and not in lieu of, any other penalty or remedy available for a violation of this chapter.

Sec. 9. Chapter 535 of NRS is hereby amended by adding thereto the provisions set forth as sections 10 and 11 of this act.

Sec. 10. *1. In addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter, any permit, order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State*

1 *Engineer pursuant to NRS 532.120 to pay an administrative fine not to exceed*
2 *\$10,000 per day for each violation as determined by the State Engineer.*

3 *2. If an administrative fine is imposed against a person pursuant to*
4 *subsection 1, the State Engineer may require the person to pay the costs of the*
5 *proceeding, including investigative costs and attorney's fees.*

6 *3. An order imposing an administrative fine or requiring the payment of*
7 *costs or fees pursuant to this section may be reviewed by a district court pursuant*
8 *to NRS 533.450.*

9 **Sec. 11.** *1. The State Engineer may seek injunctive relief in the*
10 *appropriate court to prevent the continuance or occurrence of any act or practice*
11 *which violates any provision of this chapter, any permit, order or decision issued*
12 *by the State Engineer pursuant to this chapter or any regulation adopted by the*
13 *State Engineer pursuant to NRS 532.120.*

14 *2. On a showing by the State Engineer that a person is engaged, or is about*
15 *to engage, in any act or practice which violates or will violate any provision of*
16 *this chapter, any permit, order or decision issued by the State Engineer pursuant*
17 *to this chapter or any regulation adopted by the State Engineer pursuant to NRS*
18 *532.120, the court may issue, without a bond, any prohibitory or mandatory*
19 *injunction that the facts may warrant, including a temporary restraining order*
20 *issued ex parte or, after notice and hearing, a preliminary or permanent*
21 *injunction.*

22 *3. Failure to establish lack of an adequate remedy at law or irreparable*
23 *harm is not a ground for denying a request for a temporary restraining order or*
24 *injunction.*

25 *4. The court may require the posting of a sufficient performance bond or*
26 *other security to ensure compliance with the court order within the period*
27 *prescribed.*

28 *5. Any proceeding conducted or injunction or order issued pursuant to this*
29 *section is in addition to, and not in lieu of, any other penalty or remedy available*
30 *for a violation of this chapter.*

31 **Sec. 12.** NRS 535.100 is hereby amended to read as follows:

32 535.100 1. ~~It is unlawful for any person being~~ *Any person who is* the
33 owner of or in possession of any sawmill used for the making of lumber, or any
34 slaughterhouse, brewery or tannery ~~to~~ *shall not* injure or obstruct the natural flow
35 of water in any river, creek or other stream.

36 2. Any city or county government, or any person, ~~being~~ *who is* the owner of
37 or in possession of any agricultural lands ~~[- who may be]~~ *and who is* injured by
38 reason of the violation on the part of any person of the provisions contained in
39 subsection 1 ~~[- shall have the right to]~~ *may* commence and maintain an action
40 against ~~such~~ *the* person for any damage sustained, in such manner as may be
41 provided by law.

42 ~~3. Any person who shall willfully and knowingly violate the provisions of~~
43 ~~this section shall be punished by a fine of not more than \$500.]~~

44 **Sec. 13.** Chapter 536 of NRS is hereby amended by adding thereto the
45 provisions set forth as sections 14 and 15 of this act.

46 **Sec. 14.** *1. In addition to any other penalty provided by law, the State*
47 *Engineer may, after notice and opportunity for a hearing, require a person who*
48 *violates any provision of this chapter, any order or decision issued by the State*
49 *Engineer pursuant to this chapter or any regulation adopted by the State*
50 *Engineer pursuant to NRS 532.120 to pay an administrative fine not to exceed*
51 *\$10,000 per day for each violation as determined by the State Engineer.*

1 2. *If an administrative fine is imposed against a person pursuant to*
2 *subsection 1, the State Engineer may require the person to pay the costs of the*
3 *proceeding, including investigative costs and attorney's fees.*

4 3. *An order imposing an administrative fine or requiring the payment of*
5 *costs or fees pursuant to this section may be reviewed by a district court pursuant*
6 *to NRS 533.450.*

7 **Sec. 15.** *1. The State Engineer may seek injunctive relief in the*
8 *appropriate court to prevent the continuance or occurrence of any act or practice*
9 *which violates any provision of this chapter, any order or decision issued by the*
10 *State Engineer pursuant to this chapter or any regulation adopted by the State*
11 *Engineer pursuant to NRS 532.120.*

12 2. *On a showing by the State Engineer that a person is engaged, or is about*
13 *to engage, in any act or practice which violates or will violate any provision of*
14 *this chapter, any order or decision issued by the State Engineer pursuant to this*
15 *chapter or any regulation adopted by the State Engineer pursuant to NRS*
16 *532.120, the court may issue, without a bond, any prohibitory or mandatory*
17 *injunction that the facts may warrant, including a temporary restraining order*
18 *issued ex parte or, after notice and hearing, a preliminary or permanent*
19 *injunction.*

20 3. *Failure to establish lack of an adequate remedy at law or irreparable*
21 *harm is not a ground for denying a request for a temporary restraining order or*
22 *injunction.*

23 4. *The court may require the posting of a sufficient performance bond or*
24 *other security to ensure compliance with the court order within the period*
25 *prescribed.*

26 5. *Any proceeding conducted or injunction or order issued pursuant to this*
27 *section is in addition to, and not in lieu of, any other penalty or remedy available*
28 *for a violation of this chapter.*

29 **Sec. 16.** This act becomes effective on July 1, 2007.