

Amendment No. 945

Assembly Amendment to Senate Bill No. 274 First Reprint (BDR 48-206)

Proposed by: Assembly Committee on Government Affairs**Amendment Box:** Replaces Amendment No. 925**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

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.

MSM



Date: 5/23/2007

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. **Section 7 provides additionally that: (1) in determining violations relating to the unauthorized use of water from certain wells, it is the burden of the State Engineer to prove which user or users of water are withdrawing water in excess of their individual allotments; and (2) the State Engineer may require users of water from certain wells to install and maintain, at their own expense, meters to measure their individual withdrawal of water.**

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.

Section 16 of this bill requires the State Engineer to consider certain matters in adopting regulations to carry out the amendatory provisions of this bill.

Section 17 of this bill requires the State Engineer, on or before January 1, 2009, to submit to the Director of the Legislative Counsel Bureau a written report detailing his

efforts in, and progress toward, the development and adoption of regulations to carry out the amendatory provisions of this bill.

Section 18 of this bill prohibits the State Engineer, before July 1, 2009, from imposing an administrative penalty pursuant to the amendatory provisions of this bill or any regulations adopted to carry out those amendatory provisions.

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, 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.*

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 specified in this section.*

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

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

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

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

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

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

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

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

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

8. Appeals may be taken to the Supreme Court from the judgment of the 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. In determining violations of this chapter relating to the unauthorized use of water yielded from a well that is used pursuant to a permit issued by the State Engineer and that has 16 or fewer connections, the State Engineer has the burden of proving which user is withdrawing water in excess of the portion of water allotted to the connection of that user. The State Engineer may require any or all users of the well to install and maintain, at their own expense, a meter that measures the amount of water withdrawn from the well by each connection.

3. 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.

~~3-7~~ *4. 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 Engineer pursuant to NRS 532.120 to pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.*

2. *If an administrative fine is imposed against a person pursuant to subsection 1, 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 payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to NRS 533.450.*

Sec. 11. 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, any permit, order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to 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, any permit, order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to 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. 12. NRS 535.100 is hereby amended to read as follows:

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

2. Any city or county government, or any person, ~~[being]~~ *who is* the owner of or in possession of any agricultural lands ~~[, who may be]~~ *and who is* injured by reason of the violation on the part of any person of the provisions contained in

1 subsection 1 ~~[shall have the right to]~~ *may* commence and maintain an action
2 against ~~[such]~~ *the* person for any damage sustained, in such manner as may be
3 provided by law.

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

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

8 **Sec. 14. 1.** *In addition to any other penalty provided by law, the State*
9 *Engineer may, after notice and opportunity for a hearing, require a person who*
10 *violates any provision of this chapter, any order or decision issued by the State*
11 *Engineer pursuant to this chapter or any regulation adopted by the State*
12 *Engineer pursuant to NRS 532.120 to pay an administrative fine not to exceed*
13 *\$10,000 per day for each violation as determined by the State Engineer.*

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

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

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

25 *2. On a showing by the State Engineer that a person is engaged, or is about*
26 *to engage, in any act or practice which violates or will violate any provision of*
27 *this chapter, any order or decision issued by the State Engineer pursuant to this*
28 *chapter or any regulation adopted by the State Engineer pursuant to NRS*
29 *532.120, the court may issue, without a bond, any prohibitory or mandatory*
30 *injunction that the facts may warrant, including a temporary restraining order*
31 *issued ex parte or, after notice and hearing, a preliminary or permanent*
32 *injunction.*

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

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

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

42 **Sec. 16.** *The State Engineer shall, in adopting regulations to carry out*
43 *the amendatory provisions of this act:*

44 *1. Consider establishing a minimum threshold amount of water that a*
45 *user of water would be required to exceed in using, wasting or diverting water*
46 *in an unlawful manner before an administrative penalty would be imposed;*

47 *2. Comply with the provisions of chapter 233B of NRS;*

48 *3. Consider waiving an administrative penalty for a violation if the*
49 *violation has, in the determination of the State Engineer, made significant*
50 *progress toward correcting the violation; and*

51 *4. In addition to the requirements of subsection 1, consider waiving an*
52 *administrative penalty in the case of an unauthorized use or willful waste of*
53 *water in violation of NRS 533.460 or an unlawful diversion of water in*

1 violation of NRS 533.530, if the amount of water so used or wasted does not
2 exceed 2 acre-feet per annum.

3 *Sec. 17.* The State Engineer shall, on or before January 1, 2009, submit
4 to the Director of the Legislative Counsel Bureau a written report detailing the
5 efforts and progress of the State Engineer in developing and adopting
6 regulations to carry out the amendatory provisions of this act.

7 *Sec. 18.* The State Engineer shall not, before July 1, 2009, impose an
8 administrative penalty pursuant to the amendatory provisions of this act or
9 any regulations adopted to carry out the amendatory provisions of this act.

10 ~~*Sec. 16.*~~ *Sec. 19.* This act becomes effective on July 1, 2007.