

ASSEMBLY BILL NO. 419—ASSEMBLYMAN GOICOECHEA

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to groundwater basins.
(BDR 48-299)

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 water; requiring the State Engineer to designate certain groundwater basins as critical management areas in certain circumstances; requiring the State Engineer to take certain actions in such a basin unless a groundwater management plan has been approved for the basin; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the State Engineer has various powers and duties with
2 respect to regulating the groundwater in this State. (Chapter 534 of NRS) **Section 3**
3 of this bill requires the State Engineer to designate as a critical management area
4 any basin in which withdrawals of groundwater consistently exceed the perennial
5 yield of the basin upon the petition of a majority of the holders of certificates or
6 permits to appropriate water in the basin that are on file in the Office of the State
7 Engineer. If a basin is so designated for at least 10 consecutive years, **section 3**
8 requires the State Engineer to order that withdrawals of groundwater be restricted
9 in the basin to conform to priority rights, unless a groundwater management plan
10 has been approved for the basin. **Section 1** of this bill prescribes the procedure for
11 the proposal, approval and revision of such a plan. **Section 2** of this bill includes
12 the existence of a groundwater management plan in a basin as a consideration for
13 the State Engineer in determining whether to grant a request for an extension of the
14 time necessary to work a forfeiture of water in such a basin.



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

Section 1. Chapter 534 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In a basin that has been designated as a critical management area by the State Engineer pursuant to subsection 7 of NRS 534.110, a petition for the approval of a groundwater management plan for the basin may be submitted to the State Engineer. The petition must be signed by a majority of the holders of permits or certificates to appropriate water in the basin that are on file in the Office of the State Engineer and must be accompanied by a groundwater management plan which must set forth the necessary steps for removal of the basin's designation as a critical management area.

2. In determining whether to approve a groundwater management plan submitted pursuant to subsection 1, the State Engineer shall consider, without limitation:

- (a) The hydrology of the basin;*
- (b) The physical characteristics of the basin;*
- (c) The relationship between surface water and groundwater in the basin;*
- (d) The geographic spacing and location of the withdrawals of groundwater in the basin;*
- (e) The quality of the water in the basin;*
- (f) The wells located in the basin including, without limitation, domestic wells;*
- (g) Whether a groundwater management plan already exists for the basin; and*
- (h) Any other factor deemed relevant by the State Engineer.*

3. Before approving or disapproving a groundwater management plan submitted pursuant to subsection 1, the State Engineer shall hold a public hearing to take testimony on the plan in the county where the basin lies or, if the basin lies in more than one county, within the county where the major portion of the basin lies. The State Engineer shall cause notice of the hearing to be:

- (a) Given once each week for 2 consecutive weeks before the hearing in a newspaper of general circulation in the county or counties in which the basin lies.*
- (b) Posted on the Internet website of the State Engineer for at least 2 consecutive weeks immediately preceding the date of the hearing.*

4. The decision of the State Engineer on a groundwater management plan may be reviewed by the district court of the county pursuant to NRS 533.450.



1 **5. An amendment to a groundwater management plan must**
2 **be proposed and approved in the same manner as an original**
3 **groundwater management plan is proposed and approved**
4 **pursuant to this section.**

5 **Sec. 2.** NRS 534.090 is hereby amended to read as follows:

6 534.090 1. Except as otherwise provided in this section,
7 failure for 5 successive years after April 15, 1967, on the part of the
8 holder of any right, whether it is an adjudicated right, an
9 unadjudicated right or a permitted right, and further whether the
10 right is initiated after or before March 25, 1939, to use beneficially
11 all or any part of the underground water for the purpose for which
12 the right is acquired or claimed, works a forfeiture of both
13 undetermined rights and determined rights to the use of that water to
14 the extent of the nonuse. If the records of the State Engineer or any
15 other documents specified by the State Engineer indicate at least 4
16 consecutive years, but less than 5 consecutive years, of nonuse of all
17 or any part of a water right which is governed by this chapter, the
18 State Engineer shall notify the owner of the water right, as
19 determined in the records of the Office of the State Engineer, by
20 registered or certified mail that the owner has 1 year after the date of
21 the notice in which to use the water right beneficially and to provide
22 proof of such use to the State Engineer or apply for relief pursuant
23 to subsection 2 to avoid forfeiting the water right. If, after 1 year
24 after the date of the notice, proof of beneficial use is not sent to the
25 State Engineer, the State Engineer shall, unless the State Engineer
26 has granted a request to extend the time necessary to work a
27 forfeiture of the water right, declare the right forfeited within 30
28 days. Upon the forfeiture of a right to the use of groundwater, the
29 water reverts to the public and is available for further appropriation,
30 subject to existing rights. If, upon notice by registered or certified
31 mail to the owner of record whose right has been declared forfeited,
32 the owner of record fails to appeal the ruling in the manner provided
33 for in NRS 533.450, and within the time provided for therein, the
34 forfeiture becomes final. The failure to receive a notice pursuant to
35 this subsection does not nullify the forfeiture or extend the time
36 necessary to work the forfeiture of a water right.

37 2. The State Engineer may, upon the request of the holder of
38 any right described in subsection 1, extend the time necessary to
39 work a forfeiture under that subsection if the request is made before
40 the expiration of the time necessary to work a forfeiture. The State
41 Engineer may grant, upon request and for good cause shown, any
42 number of extensions, but a single extension must not exceed 1 year.
43 In determining whether to grant or deny a request, the State
44 Engineer shall, among other reasons, consider:



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

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

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

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

(e) *Whether a groundwater management plan has been approved for the basin pursuant to section 1 of this act; and*

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

➔ The State Engineer shall notify, by registered or certified mail, the owner of the water right, as determined in the records of the Office of the State Engineer, of whether the State Engineer has granted or denied the holder's request for an extension pursuant to this subsection.

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

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

Sec. 3. NRS 534.110 is hereby amended to read as follows:

534.110 1. The State Engineer shall administer this chapter and shall prescribe all necessary regulations within the terms of this chapter for its administration.



1 2. The State Engineer may:

2 (a) Require periodical statements of water elevations, water
3 used, and acreage on which water was used from all holders of
4 permits and claimants of vested rights.

5 (b) Upon his or her own initiation, conduct pumping tests to
6 determine if overpumping is indicated, to determine the specific
7 yield of the aquifers and to determine permeability characteristics.

8 3. The State Engineer shall determine whether there is
9 unappropriated water in the area affected and may issue permits
10 only if the determination is affirmative. The State Engineer may
11 require each applicant to whom a permit is issued for a well:

12 (a) For municipal, quasi-municipal or industrial use; and

13 (b) Whose reasonably expected rate of diversion is one-half
14 cubic foot per second or more,

15 ➔ to report periodically to the State Engineer concerning the effect
16 of that well on other previously existing wells that are located within
17 2,500 feet of the well.

18 4. It is a condition of each appropriation of groundwater
19 acquired under this chapter that the right of the appropriator relates
20 to a specific quantity of water and that the right must allow for a
21 reasonable lowering of the static water level at the appropriator's
22 point of diversion. In determining a reasonable lowering of the static
23 water level in a particular area, the State Engineer shall consider the
24 economics of pumping water for the general type of crops growing
25 and may also consider the effect of using water on the economy of
26 the area in general.

27 5. This section does not prevent the granting of permits to
28 applicants later in time on the ground that the diversions under the
29 proposed later appropriations may cause the water level to be
30 lowered at the point of diversion of a prior appropriator, so long as
31 any protectable interests in existing domestic wells as set forth in
32 NRS 533.024 and the rights of holders of existing appropriations
33 can be satisfied under such express conditions. At the time a permit
34 is granted for a well:

35 (a) For municipal, quasi-municipal or industrial use; and

36 (b) Whose reasonably expected rate of diversion is one-half
37 cubic foot per second or more,

38 ➔ the State Engineer shall include as a condition of the permit that
39 pumping water pursuant to the permit may be limited or prohibited
40 to prevent any unreasonable adverse effects on an existing domestic
41 well located within 2,500 feet of the well, unless the holder of the
42 permit and the owner of the domestic well have agreed to alternative
43 measures that mitigate those adverse effects.

44 6. ~~The~~ *Except as otherwise provided in subsection 7, the*
45 State Engineer shall conduct investigations in any basin or portion



thereof where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants, and if the findings of the State Engineer so indicate, the State Engineer may order that withdrawals , *including, without limitation, withdrawals from domestic wells*, be restricted to conform to priority rights.

7. *The State Engineer:*

(a) *May designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin.*

(b) *Shall designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin upon receipt of a petition for such a designation which is signed by a majority of the holders of certificates or permits to appropriate water in the basin that are on file in the Office of the State Engineer.*

↪ *The designation of a basin as a critical management area pursuant to this subsection may be appealed pursuant to NRS 533.450. If a basin has been designated as a critical management area for at least 10 consecutive years, the State Engineer shall order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights, unless a groundwater management plan has been approved for the basin pursuant to section 1 of this act.*

8. In any basin or portion thereof in the State designated by the State Engineer, the State Engineer may restrict drilling of wells in any portion thereof if the State Engineer determines that additional wells would cause an undue interference with existing wells. Any order or decision of the State Engineer so restricting drilling of such wells may be reviewed by the district court of the county pursuant to NRS 533.450.

Sec. 4. This act becomes effective on July 1, 2011.

