

Amendment No. 789

Senate Amendment to Assembly Bill No. 419 First Reprint (BDR 48-299)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	☐	Lost	☐ _____	Adopted	☐	Lost	☐ _____
Concurred In	☐	Not	☐ _____	Concurred In	☐	Not	☐ _____
Receded	☐	Not	☐ _____	Receded	☐	Not	☐ _____

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 underlining*** is newly added transitory language.

SRT/HAC



Date: 5/25/2011

A.B. No. 419—Revises provisions relating to groundwater basins. (BDR 48-299)



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.

~

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:

Under existing law, the State Engineer has various powers and duties with respect to regulating the groundwater in this State. (Chapter 534 of NRS) **Section 3** of this bill requires the State Engineer to designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin upon the petition of 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. If a basin is so designated for at least 10 consecutive years, **section 3** requires the State Engineer to order that withdrawals of groundwater be restricted in the basin to conform to priority rights, unless a groundwater management plan has been approved for the basin. **Section 1** of this bill prescribes the procedure for the proposal, approval and revision of such a plan. **Section 2** of this bill includes the existence of a groundwater management plan in a basin as a consideration for the State Engineer in determining whether to grant a request for an extension of the 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)~~ (d) The quality of the water in the basin;

~~(f)~~ (e) The wells located in the basin, including, without limitation, domestic wells;

~~(g)~~ (f) Whether a groundwater management plan already exists for the basin; and

~~(h)~~ (g) 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.

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

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

534.090 1. Except as otherwise provided in this section, failure for 5 successive years after April 15, 1967, on the part of the holder of any right, whether it is an adjudicated right, an unadjudicated right or a permitted right, and further whether the right is initiated after or before March 25, 1939, to use beneficially all or any part of the underground water for the purpose for which the right is acquired or claimed, works a forfeiture of both undetermined rights and determined rights to the use of that water to the extent of the nonuse. If the records of the State Engineer or any other documents specified by the State Engineer indicate at least 4 consecutive years, but less than 5 consecutive years, of nonuse of all or any part of a water right which is governed by this chapter, the State Engineer shall notify the owner of the water right, as determined in the records of the Office of the State Engineer, by registered or certified mail that the owner has 1 year after the date of the notice in which to use the water right beneficially and to provide proof of such use to the State Engineer or apply for relief pursuant to subsection 2 to avoid forfeiting the water right. If, after 1 year after the date of the notice, proof of beneficial use is not sent to the State Engineer, the State Engineer shall, unless the State Engineer has granted a request to extend the time necessary to work a forfeiture of the water right, declare the right forfeited within 30 days. Upon the forfeiture of a right to the use of groundwater, the water reverts to the public and is available for further appropriation, subject to existing rights. If, upon notice by registered or certified mail to the owner of record whose right has been declared

1 forfeited, the owner of record fails to appeal the ruling in the manner provided for
2 in NRS 533.450, and within the time provided for therein, the forfeiture becomes
3 final. The failure to receive a notice pursuant to this subsection does not nullify the
4 forfeiture or extend the time necessary to work the forfeiture of a water right.

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

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

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

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

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

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

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

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

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

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

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

48 534.110 1. The State Engineer shall administer this chapter and shall
49 prescribe all necessary regulations within the terms of this chapter for its
50 administration.

51 2. The State Engineer may:

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

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

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

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

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

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

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

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

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

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

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

6. ~~The~~ *Except as otherwise provided in subsection 7, the* 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*

1 *rights, unless a groundwater management plan has been approved for the basin*
2 *pursuant to section 1 of this act.*

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

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