

Amendment No. 138

Assembly Amendment to Assembly Bill No. 73

(BDR 48-467)

Proposed by: Assembly Committee on Government Affairs**Amends:** Summary: No Title: Yes 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 underlining* is newly added transitory language.

CAF/JRS



Date: 4/11/2011

A.B. No. 73—Revises provisions governing the appropriation of water for a beneficial use. (BDR 48-467)



ASSEMBLY BILL NO. 73—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE DIVISION OF WATER RESOURCES)

DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the appropriation of water for a beneficial use. (BDR 48-467)

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; authorizing the State Engineer or any assistant or authorized agent of the State Engineer to enter certain ~~premises~~ **land** to investigate and carry out the duties of the State Engineer; ~~requiring the State Engineer to cancel a permit to appropriate water for a beneficial use if the holder of the permit fails to file certain information within a certain period after the date of the notice to file that information;~~ revising provisions relating to the forfeiture of certain water rights; removing provisions requiring the State Engineer to adopt regulations establishing a program to allow a public water system to receive a credit for adding a new customer to the system; ~~authorizing a public water system to receive such a credit under certain circumstances;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, if an owner or proprietor appropriates underground water through the use of a well, the State Engineer or any assistant or authorized agent of the State Engineer is authorized to enter the premises of the owner or proprietor where such a well is situated to investigate and carry out the duties of the State Engineer in the administration of the provisions of chapter 534 of NRS governing underground water and wells. (NRS 534.130) However, existing law does not confer similar authority upon the State Engineer or any assistant or authorized agent of the State Engineer to enter the ~~premises~~ **land** of an owner or proprietor for the purpose of carrying out the provisions of chapter 533 of NRS governing vested water rights and rights to appropriate public water for a beneficial use. **Section 1** of this bill specifically confers such authority upon the State Engineer or any assistant or authorized agent of the State Engineer for the purpose of carrying out the provisions of chapter 533 of NRS.

~~Existing law requires the State Engineer to notify a holder of a permit to appropriate water for a beneficial use if the holder of the permit fails to file with the State Engineer proof of an application of water to the beneficial use and any required map for that appropriation. Existing law further provides that, if the holder of the permit fails to file the required affidavit~~

and map with the State Engineer within 20 days after the mailing of the notice, the State Engineer is required to cancel the permit. (NRS 533.410) Section 2 of this bill requires the State Engineer to cancel the permit if the holder of the permit fails to file the required affidavit and map within 20 days after the date of the notice rather than 20 days after the mailing of the notice.]

Under existing law, the State Engineer is authorized to inspect at any time the construction of a dam for which he or she has issued a permit to appropriate, store and use the water to be impounded or diverted by the dam. (NRS 535.010) Existing law also requires the State Engineer to make inspections of dams from time to time. (NRS 535.030) In addition to any such authorized or required inspections, and similarly to the authority conferred in section 1, section 5 of this bill specifically confers authority upon the State Engineer or any assistant or authorized agent of the State Engineer to enter the land of any owner or proprietor where any dam or other obstruction is situated to investigate and carry out the duties of the State Engineer pursuant to chapter 535 of NRS.

Existing law provides for the forfeiture of a right to use beneficially all or any part of underground water for the purpose for which the underground water is acquired or claimed. Existing law also authorizes the State Engineer to extend the amount of time required to work the forfeiture. (NRS 534.090) ~~Section 3~~ of this bill ~~provided~~ clarifies that groundwater rights for which a certificate of beneficial use has been issued, instead of groundwater rights held under a permit, are subject to the forfeiture procedure. Permitted rights are lost through the process of cancellation. (NRS 533.395) In addition, ~~section 3~~ requires the State Engineer to declare a water right forfeited for nonuse if the State Engineer grants an extension of time to the owner of the water right and, before the expiration of that extension of time, proof of resumption of beneficial use or another request for an extension of time is not filed in the Office of the State Engineer.

Existing law requires the State Engineer to adopt regulations establishing a program that allows a public water system to receive a credit for adding a new customer to the public water system in any area that the State Engineer has designated as a groundwater basin and in which the State Engineer has denied one or more applications for a municipal use of groundwater. Before adopting those regulations, existing law requires the State Engineer to hold a public hearing within the basin to which the regulations will apply or within the county in which a major portion of the groundwater basin lies. (NRS 534.350) ~~Section 4~~ of this bill deletes the requirement for the State Engineer to adopt those regulations and to hold a public hearing before adopting the regulations. ~~[In lieu of adopting the regulations, section 4 sets forth directly in NRS the requirements for a public water system to receive a credit for adding a new customer to the public water system in a designated groundwater basin.]~~

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

Section 1. Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

The State Engineer or any assistant or authorized agent of the State Engineer may enter the ~~premises~~ land of any owner or proprietor where any water ~~right or water user~~ is ~~situated~~ being diverted or used pursuant to this chapter at any reasonable hour of the day to investigate and carry out the duties of the State Engineer pursuant to this chapter.

Sec. 2. ~~[NRS 533.410 is hereby amended to read as follows:~~

~~533.410 If any holder of a permit from the State Engineer fails, before the date set for filing in the permit or the date set by any extension granted by the State Engineer, to file with the State Engineer proof of application of water to beneficial use, and the accompanying map, if a map is required, the State Engineer shall advise the holder of the permit, by registered or certified mail, that the permit is held for cancellation. If the holder, within 20 days after the [mailing] date of [this]~~

~~the notice, fails to file with the State Engineer the required affidavit and map, if a map is required, or an application for an extension of time to file the instruments, the State Engineer shall cancel the permit. For good cause shown, upon application made before the expiration of the 30 day period, the State Engineer may grant an extension of time in which to file the instruments.~~ **(Deleted by amendment.)**

Sec. 3. 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 ~~for which a certificate has been issued pursuant to NRS 533.425,~~ 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 *resumption of* beneficial use is not ~~sent to~~ *filed in the Office of 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 forfeited, the owner of record fails to appeal the ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the forfeiture becomes final. The failure to receive a notice pursuant to this subsection does not nullify the forfeiture or extend the time necessary to work the forfeiture of a water right.

2. The State Engineer may, upon the request of the holder of any right described in subsection 1, extend the time necessary to work a forfeiture under that subsection if the request is made before the expiration of the time necessary to work a forfeiture. The State Engineer may grant, upon request and for good cause shown, any number of extensions, but a single extension must not exceed 1 year. In determining whether to grant or deny a request, the State 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 the holder has demonstrated efficient ways of using the water for agricultural purposes, such as center-pivot irrigation.

1 ↵ The State Engineer shall notify, by registered or certified mail, the owner of the
2 water right, as determined in the records of the Office of the State Engineer, of
3 whether the State Engineer has granted or denied the holder's request for an
4 extension pursuant to this subsection. *If the State Engineer grants an extension*
5 *pursuant to this subsection and, before the expiration of that extension, proof of*
6 *resumption of beneficial use or another request for an extension is not filed in*
7 *the Office of the State Engineer, the State Engineer shall declare the water right*
8 *forfeited within 30 days after the expiration of the extension granted pursuant to*
9 *this subsection.*

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

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

27 **Sec. 4.** NRS 534.350 is hereby amended to read as follows:

28 534.350 1. ~~[The State Engineer shall adopt regulations establishing a~~
29 ~~program that allows a]~~ A public water system ~~[to]~~ **may** receive credits, as provided
30 in this section, for the addition of new customers to the system. The ~~[program]~~
31 *granting of a credit pursuant to this section* must be limited to public water
32 systems in areas:

33 (a) Designated as groundwater basins by the State Engineer pursuant to the
34 provisions of NRS 534.030; ~~and~~

35 (b) ~~[In which the State Engineer has denied one or more applications for any~~
36 ~~municipal uses of groundwater] ~~[]~~ ~~[] and~~~~

37 ~~—(c)—~~ *For which the State Engineer has issued an order for granting a credit*
38 *pursuant to this section.*

39 2. ~~[Before] [At least 30 days before the State Engineer] [adopts any~~
40 ~~regulations] [issues an order granting a credit pursuant to this section] [regarding~~
41 ~~any particular groundwater basin, the State Engineer shall hold a public hearing:~~

42 ~~—(a) Within the basin to which the regulations will apply if adequate facilities to~~
43 ~~hold a hearing are available within that basin; or~~

44 ~~—(b) In all other cases, within the county where the major portion of that basin~~
45 ~~lies;~~

46 ~~↵ to take testimony from any interested persons regarding the proposed~~
47 ~~regulations.] ~~[] the public water system requesting the credit shall submit to the~~~~
48 ~~State Engineer a written confirmation indicating that each customer of the public~~
49 ~~water system has been notified of the request by the public water system. The~~
50 ~~written confirmation must include the response, if any, the public water system~~
51 ~~received from each of those customers.~~

52 ~~—3.—~~ *[Upon adoption of the regulations required by this section regarding a*
53 ~~particular groundwater basin, a]~~ A public water system which provides service in

~~{that}~~ a groundwater basin is entitled to receive a credit for each customer who is added to the system ~~{after the adoption of those regulations}~~ and:

(a) Voluntarily ceases to draw water from a domestic well located within that basin; or

(b) Is the owner of a lot or other parcel of land, other than land used or intended solely for use as a location for a domestic well, which:

(1) Is located within that basin;

(2) Was established as a separate lot or parcel before July 1, 1993;

(3) Was approved by a local governing body or planning commission for service by an individual domestic well before July 1, 1993; and

(4) Is subject to a written agreement which was voluntarily entered into by the owner with the public water system pursuant to which the owner agrees not to drill a domestic well on the land and the public water system agrees that it will provide water service to the land. Any such agreement must be acknowledged and recorded in the same manner as conveyances affecting real property are required to be acknowledged and recorded pursuant to chapter 111 of NRS.

~~{44}~~ 3. If a county requires, by ordinance, the dedication to the county of a right to appropriate water from a domestic well which is located on a lot or other parcel of land that was established as a separate lot or parcel on or after July 1, 1993, the county may, by relinquishment to the State Engineer, allow the right to appropriate water to revert to the source of the water. The State Engineer shall not accept a relinquishment of a right to appropriate water pursuant to this subsection unless the right is in good standing as determined by the State Engineer. A right to appropriate water that is dedicated and relinquished pursuant to this subsection:

(a) Remains appurtenant only to the parcel of land in which it is located as specified on the parcel map; and

(b) Maintains its date of priority established pursuant to NRS 534.080.

~~{54}~~ 4. If an owner of a parcel of land specified in subsection ~~{44}~~ 3 becomes a new customer of a public water system for that parcel of land, the public water system is entitled to receive a credit in the same manner as the addition of any other customer to the public water system pursuant to this section.

~~{64}~~ 5. The State Engineer may require a new customer, who voluntarily ceases to draw water from a domestic well as provided in paragraph (a) of subsection ~~{44}~~ 2 or whose right to appropriate water is dedicated pursuant to subsection ~~{44}~~ 3, to plug that well.

~~{74}~~ 6. A credit granted pursuant to this section:

(a) Must be sufficient to enable the public water system to add one service connection for a single-family dwelling to the system, except that the credit may not exceed the increase in water consumption attributable to the additional service connection or 2 acre-feet per year, whichever is less.

(b) May not be converted to an appropriative water right.

~~{84}~~ 7. This section does not:

(a) Require a public water system to extend its service area.

(b) Authorize any increase in the total amount of groundwater pumped in a groundwater basin.

(c) Affect any rights of an owner of a domestic well who does not voluntarily comply with the provisions of this section.

~~{94}~~ 8. As used in this section:

(a) "Domestic well" means a well used for culinary and household purposes in:

(1) A single-family dwelling; and

(2) An accessory dwelling unit for a single-family dwelling if provided for in an applicable local ordinance,

1 including the watering of a garden, lawn and domestic animals and where the
2 draught does not exceed 2 acre-feet per year.

3 (b) "Public water system" has the meaning ascribed to it in NRS 445A.840.

4 Sec. 5. Chapter 535 of NRS is hereby amended by adding thereto a new
5 section to read as follows:

6 *In addition to any inspection conducted pursuant to NRS 535.010 or 535.030,*
7 *the State Engineer or any assistant or authorized agent of the State Engineer may*
8 *enter the land of any owner or proprietor where any dam or other obstruction is*
9 *situated at any reasonable hour of the day to investigate and carry out the duties*
10 *of the State Engineer pursuant to this chapter.*

11 Sec. 6. The Legislature hereby declares that:

12 1. It has examined the past and present practice of the State Engineer
13 with respect to the forfeiture of water rights on and after March 15, 1947, and
14 finds that the State Engineer has applied the provisions of Nevada law relating
15 to the forfeiture of water rights in a manner consistent with the provisions of
16 subsection 1 of NRS 534.090, as amended by section 3 of this act.

17 2. The amendatory provisions of subsection 1 of section 3 of this act are
18 intended to clarify rather than change the existing application of NRS 534.090
19 relating to the forfeiture of water rights and to promote thereby stability and
20 consistency in the administration of chapters 533 and 534 of NRS.

21 ~~[Sec. 5.]~~ Sec. 7. This act becomes effective upon passage and approval.