

Amendment No. 335

Senate Amendment to Senate Bill No. 362 (BDR 48-926)

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

Adoption of this amendment will REMOVE the 2/3s majority vote requirement from S.B. 362.

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.

EGO/BJE



Date: 4/25/2011

S.B. No. 362—Revises provisions concerning groundwater basins. (BDR 48-926)



SENATE BILL NO. 362—SENATOR SCHNEIDER (BY REQUEST)

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions concerning groundwater basins. (BDR 48-926)

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~~ **develop groundwater management plans in** certain groundwater basins ~~as critical management areas; requiring the State Engineer to grant a request for an extension of time to work a~~ **; providing exceptions to the requirements for the cancellation or forfeiture of water rights in such basins** in certain circumstances; ~~revising the fee required for an extension in those circumstances; requiring the use of such fees for the retirement of certain water rights;~~ 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 4~~ **2** of this bill requires the State Engineer to ~~designate as a critical management area any~~ **develop a groundwater management plan for a basin in a county whose population is 700,000 or more (currently Clark County) which has been designated to be in need of administration by the State Engineer for at least 10 consecutive years and in which withdrawals of groundwater have consistently exceeded the perennial yield of the basin**, ~~as determined by the State Engineer. Section 2 prescribes the contents of such a plan, including a timeline by which the excessive withdrawals are required to cease, and a procedure for the approval of such a plan. If the withdrawals of groundwater in the basin exceed the perennial yield of the basin at the completion of the timeline included in the approved plan, section 2 requires the State Engineer to order that withdrawals of groundwater be restricted in the basin to conform to priority rights.~~

Under existing law, the State Engineer ~~has the discretion whether to grant a request for the extension of the time necessary to work a~~ **is required to cancel a permit to appropriate water if, in the judgment of the State Engineer, the holder of the permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation. (NRS 533.395) The State Engineer also, with certain exceptions, is required to declare the forfeiture of a water right** ~~for nonuse of the water right for 5 successive years. (NRS 534.090) Section 2 of this bill~~ **requires** ~~provides an exception to these requirements if the State Engineer~~ **to extend the time necessary to work a forfeiture in a basin which is designated as a critical management area if the holder of the right pays a fee that is deposited in an account in the State General Fund, the money in which may only be used to pay the costs of retiring water rights in the particular designated basin where the water right is located. Section 2 further requires the State Engineer to adopt a sliding scale for such a fee, based on**

the priority of the right.] has entered into an agreement with the owner of a water right in a basin for which a groundwater management plan has been approved by the State Engineer pursuant to this bill by which the owner agrees to temporarily cease making withdrawals of groundwater from the basin.

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

Section 1. ~~[NRS 533.435 is hereby amended to read as follows:~~

~~533.435 — 1. The State Engineer shall collect the following fees:~~

For examining and filing an application for a permit to appropriate water.....	\$300.00
This fee includes the cost of publication, which is \$50.	
For reviewing a corrected application or map, or both, in connection with an application for a permit to appropriate water.....	100.00
For examining and acting upon plans and specifications for construction of a dam.....	1,000.00
For examining and filing an application for each permit to change the point of diversion, manner of use or place of use of an existing right.....	200.00
This fee includes the cost of the publication of the application, which is \$50.	
For issuing and recording each permit to appropriate water for any purpose, except for generating hydroelectric power which results in nonconsumptive use of the water or watering livestock or wildlife purposes.....	300.00
plus \$3 per acre foot approved or fraction thereof.	
For issuing and recording each permit to change an existing right whether temporary or permanent for any purpose, except for generating hydroelectric power which results in nonconsumptive use of the water, for watering livestock or wildlife purposes which change the point of diversion or place of use only.....	250.00
plus \$3 per acre foot approved or fraction thereof.	
For issuing and recording each permit to appropriate or change the point of diversion or place of use of an existing right only whether temporary or permanent for watering livestock or wildlife purposes.....	200.00
plus \$50 for each second foot of water approved or fraction thereof.	
For issuing and recording each permit to appropriate or change an existing right whether temporary or permanent for water for generating hydroelectric power which results in nonconsumptive use of the water.....	\$400.00
plus \$50 for each second foot of water approved or fraction thereof.	
For issuing a waiver in connection with an application to drill a well.....	100.00
For filing a secondary application under a reservoir permit.....	250.00

For approving and recording a secondary permit under a reservoir permit.....	450.00
For reviewing each tentative subdivision map.....	150.00
plus \$1 per lot.....	
For reviewing and approving each final subdivision map.....	100.00
For storage approved under a dam permit for privately owned nonagricultural dams which store more than 50 acre-feet.....	400.00
plus \$1 per acre-foot storage capacity. This fee includes the cost of inspection and must be paid annually.....	
For filing proof of completion of work.....	50.00
For filing proof of beneficial use.....	50.00
For filing proof of resumption of a water right.....	300.00
For filing any protest.....	25.00
For] Except as otherwise provided in section 2 of this act, for filing any application for extension of time within which to file proofs, for each year for which the extension of time is sought.....	100.00
For reviewing a cancellation of a water right pursuant to a petition for review.....	300.00
For examining and filing a report of conveyance filed pursuant to paragraph (a) of subsection 1 of NRS 533.384.....	100.00
plus \$20 per conveyance document.....	
For filing any other instrument.....	10.00
For making a copy of any document recorded or filed in the Office of the State Engineer, for the first page.....	1.00
For each additional page.....	.20
For certifying to copies of documents, records or maps, for each certificate.....	5.00
For each blueprint copy of any drawing or map, per square foot.....	\$5.00
The minimum charge for a blueprint copy, per print.....	3.00
For colored mylar plots.....	10.00

~~2. When fees are not specified in subsection 1 for work required of the Office of the State Engineer, the State Engineer shall collect the actual cost of the work.~~

~~3. Except as otherwise provided in this subsection, all fees collected by the State Engineer under the provisions of this section must be deposited in the State Treasury for credit to the State General Fund. All fees received for blueprint copies of any drawing or map must be kept by the State Engineer and used only to pay the costs of printing, replacement and maintenance of printing equipment. Any publication fees received which are not used by the State Engineer for publication expenses must be returned to the persons who paid the fees. If, after exercising due diligence, the State Engineer is unable to make the refunds, the State Engineer shall deposit the fees in the State Treasury for credit to the State General Fund. The State Engineer may maintain, with the approval of the State Board of Examiners, a checking account in any bank or credit union qualified to handle state money to carry out the provisions of this subsection. The account must be secured by a depository bond satisfactory to the State Board of Examiners to the extent the account is not insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.] (Deleted by amendment.)~~

Sec. 1.5. NRS 533.395 is hereby amended to read as follows:
533.395 Except as otherwise provided in section 2 of this act:

1. If, at any time in the judgment of the State Engineer, the holder of any permit to appropriate the public water is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall require the submission of such proof and evidence as may be necessary to show a compliance with the law. If, in the judgment of the State Engineer, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall cancel the permit, and advise the holder of its cancellation. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence that the holder is not proceeding in good faith and with reasonable diligence to perfect the appropriation.

2. If any permit is cancelled under the provisions of this section or NRS 533.390 or 533.410, the holder of the permit may within 60 days of the cancellation of the permit file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public hearing. The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation.

3. If the decision of the State Engineer modifies or rescinds the cancellation of a permit, the effective date of the appropriation under the permit is vacated and replaced by the date of the filing of the written petition with the State Engineer.

4. The cancellation of a permit may not be reviewed or be the subject of any judicial proceedings unless a written petition for review has been filed and the cancellation has been affirmed, modified or rescinded pursuant to subsection 2.

5. For the purposes of this section, the measure of reasonable diligence is the steady application of effort to perfect the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.

6. The appropriation of water or the acquisition or lease of appropriated water from any:

(a) Stream system as provided for in this chapter; or

(b) Underground water as provided for in NRS 534.080,

by a political subdivision of this State or a public utility, as defined in NRS 704.020, to serve the present or the reasonably anticipated future municipal, industrial or domestic needs of its customers for water, as determined in accordance with a master plan adopted pursuant to chapter 278 of NRS or a plan approved by the State Engineer, must be considered when reviewing an extension of time.

Sec. 2. Chapter 534 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In a basin in a county whose population is 700,000 or more that has been designated as a critical management area by the State Engineer pursuant to subsection 7 of NRS 534.110, the State Engineer shall adopt, by regulation, a sliding scale for the amount of the fee for an application for extension of time necessary to work a forfeiture for each year for which such an extension of time is sought pursuant to this section. The sliding scale must be based upon the priority in the basin of the right for which the extension is requested such that the amount of the fee for an application for an extension of time for a prior right in the basin is less than the fee for an application for an extension of time for a right that was acquired later in the basin.

2. Upon request of the holder of a right described in subsection 1 of NRS 534.090 in a basin that has been designated as a critical management area, the State Engineer shall extend the time necessary to work a forfeiture under that subsection if:

~~1. (a) The request is made before the expiration of the time necessary to work a forfeiture; and~~

~~2. (b) The fee for the application for the extension is deposited in the account created pursuant to subsection 4.~~

~~3. The State Engineer shall grant any number of extensions pursuant to subsection 2, but a single extension must not exceed 1 year.~~

~~4. All fees collected pursuant to subsection 2 must be deposited with the State Treasurer and accounted for separately in the State General Fund. The account created pursuant to this subsection must be administered by the State Engineer. The money in the account does not revert to the State General Fund at the end of any fiscal year and must be carried forward to the next fiscal year.~~

~~5. If fees are collected pursuant to subsection 2 for the extension of time necessary to work a forfeiture of water rights in more than one basin that has been designated as a critical management area, the State Engineer shall account for the fees that pertain to each such basin in separate subaccounts. Money in such a subaccount must be used only to pay the costs for the retirement of water rights in the particular basin where the right for which the fee was collected is located.~~

~~6. The State Engineer shall establish, by regulation, the procedure for retiring water rights using fees collected pursuant to this section.~~ pursuant to NRS 534.030 for at least 10 consecutive years and in which the State Engineer finds that withdrawals of groundwater consistently exceed the perennial yield, the State Engineer shall develop a groundwater management plan for the basin and cause the plan to be published as an order of the State Engineer.

2. A groundwater management plan developed pursuant to subsection 1:

(a) Must include a timeline of not less than 5 years or more than 20 years by which the withdrawals of groundwater in the basin must cease to exceed the perennial yield of the basin, as determined by the State Engineer.

(b) May include provisions which allow an owner of a water right in the basin to:

(1) Voluntarily relinquish the water right;

(2) Voluntarily reduce the owner's withdrawals of groundwater from the basin;

(3) Pay another owner of a water right in the basin to relinquish the water right or connect to a public water system;

(4) Enter into an agreement with all owners of water rights in the basin to regulate the use of water in the basin by a method other than in conformity with priority rights; or

(5) Enter into an agreement with the State Engineer by which the State Engineer agrees, as applicable, to not cancel the owner's permit to appropriate water pursuant to NRS 533.395 or to not declare the forfeiture of the owner's water right pursuant to NRS 534.090 during a period of at least 5 years in which the owner agrees to cease making withdrawals of groundwater from the basin.

3. Before approving a groundwater management plan developed 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 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.

4. At a hearing held pursuant to subsection 3, any party may submit evidence to substantiate a different perennial yield of the basin based on an empirical study recognized by the State Engineer.

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

3 6. If the withdrawals of groundwater in the basin exceed the perennial yield
4 of the basin, as determined by the State Engineer, at the completion of the
5 timeline included in the groundwater management plan approved for the basin
6 pursuant to this section, the State Engineer shall order that withdrawals,
7 including, without limitation, withdrawals from domestic wells, be restricted to
8 conform to priority rights.

9 7. The provisions of this section must not be construed to:

10 (a) Authorize the State Engineer to regulate a groundwater basin by a
11 method other than conformity to priority rights unless pursuant to an agreement
12 described in subparagraph (4) of paragraph (b) of subsection 2; or

13 (b) Prevent the State Engineer from approving a groundwater management
14 plan for any basin to which the provisions of this section do not apply.

15 **Sec. 3.** NRS 534.090 is hereby amended to read as follows:

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

41 2. ~~The [Except as otherwise provided in section 2 of this act, the]~~ State
42 Engineer may, upon the request of the holder of any right described in subsection 1,
43 extend the time necessary to work a forfeiture under that subsection if the request is
44 made before the expiration of the time necessary to work a forfeiture. The State
45 Engineer may grant, upon request and for good cause shown, any number of
46 extensions, but a single extension must not exceed 1 year. In determining whether
47 to grant or deny a request, the State Engineer shall, among other reasons, consider:

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

51 (b) The unavailability of water to put to a beneficial use which is beyond the
52 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.

➤ 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. 4. ~~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.~~

~~2. The State Engineer may:~~

~~(a) Require periodical statements of water elevations, water used, and acreage 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~~

1 ~~pumping water for the general type of crops growing and may also consider the~~
2 ~~effect of using water on the economy of the area in general.~~

3 ~~5. This section does not prevent the granting of permits to applicants later in~~
4 ~~time on the ground that the diversions under the proposed later appropriations may~~
5 ~~cause the water level to be lowered at the point of diversion of a prior appropriator,~~
6 ~~so long as any protectable interests in existing domestic wells as set forth in NRS~~
7 ~~533.024 and the rights of holders of existing appropriations can be satisfied under~~
8 ~~such express conditions. At the time a permit is granted for a well:~~

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

10 ~~(b) Whose reasonably expected rate of diversion is one-half cubic foot per~~
11 ~~second or more;~~

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

17 ~~6. The State Engineer shall conduct investigations in any basin or portion~~
18 ~~thereof where it appears that the average annual replenishment to the groundwater~~
19 ~~supply may not be adequate for the needs of all permittees and all vested right~~
20 ~~claimants, and if the findings of the State Engineer so indicate, the State Engineer~~
21 ~~may order that withdrawals be restricted to conform to priority rights.~~

22 ~~7. The State Engineer shall designate any basin in which withdrawals of~~
23 ~~groundwater consistently exceed the perennial yield of the basin as a critical~~
24 ~~management area. Such a designation may be appealed pursuant to NRS~~
25 ~~533.450. As used in this subsection, "perennial yield" means the amount of~~
26 ~~usable water from a groundwater aquifer that can be economically withdrawn~~
27 ~~and consumed each year for an indefinite period of time, which cannot exceed~~
28 ~~the natural recharge to that aquifer and is limited to the maximum amount of~~
29 ~~discharge that can be utilized for beneficial use.~~

30 ~~8. In any basin or portion thereof in the State designated by the State~~
31 ~~Engineer, the State Engineer may restrict drilling of wells in any portion thereof if~~
32 ~~the State Engineer determines that additional wells would cause an undue~~
33 ~~interference with existing wells. Any order or decision of the State Engineer so~~
34 ~~restricting drilling of such wells may be reviewed by the district court of the county~~
35 ~~pursuant to NRS 533.450.] (Deleted by amendment.)~~

36 **Sec. 5.** This act becomes effective on July 1, 2011.