

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 develop groundwater management plans in certain groundwater basins; providing exceptions to the requirements for the cancellation or forfeiture of water rights in such basins in certain circumstances; 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 2** of this bill requires the State Engineer to 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 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 provides an exception to these requirements if the State Engineer 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:

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 1.5.** NRS 533.395 is hereby amended to read as follows:

3 533.395 *Except as otherwise provided in section 2 of this act:*

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

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

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

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

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

(b) Underground water as provided 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 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



1 *a public hearing to take testimony on the plan in the county where*
2 *the basin lies or, if the basin lies in more than one county, within*
3 *the county where the major portion of the basin lies. The State*
4 *Engineer shall cause notice of the hearing to be given once each*
5 *week for 2 consecutive weeks before the hearing in a newspaper of*
6 *general circulation in the county or counties in which the basin*
7 *lies.*

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

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

15 6. *If the withdrawals of groundwater in the basin exceed the*
16 *perennial yield of the basin, as determined by the State Engineer,*
17 *at the completion of the timeline included in the groundwater*
18 *management plan approved for the basin pursuant to this section,*
19 *the State Engineer shall order that withdrawals, including,*
20 *without limitation, withdrawals from domestic wells, be restricted*
21 *to conform to priority rights.*

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

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

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

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

31 534.090 1. Except as otherwise provided in this section **H**
32 **and section 2 of this act**, failure for 5 successive years after
33 April 15, 1967, on the part of the holder of any right, whether it is
34 an adjudicated right, an unadjudicated right or a permitted right, and
35 further whether the right is initiated after or before March 25, 1939,
36 to use beneficially all or any part of the underground water for the
37 purpose for which the right is acquired or claimed, works a
38 forfeiture of both undetermined rights and determined rights to the
39 use of that water to the extent of the nonuse. If the records of the
40 State Engineer or any other documents specified by the State
41 Engineer indicate at least 4 consecutive years, but less than 5
42 consecutive years, of nonuse of all or any part of a water right which
43 is governed by this chapter, the State Engineer shall notify the
44 owner of the water right, as determined in the records of the Office
45 of the State Engineer, by registered or certified mail that the owner



1 has 1 year after the date of the notice in which to use the water right
2 beneficially and to provide proof of such use to the State Engineer
3 or apply for relief pursuant to subsection 2 to avoid forfeiting the
4 water right. If, after 1 year after the date of the notice, proof of
5 beneficial use is not sent to the State Engineer, the State Engineer
6 shall, unless the State Engineer has granted a request to extend
7 the time necessary to work a forfeiture of the water right, declare the
8 right forfeited within 30 days. Upon the forfeiture of a right to the
9 use of groundwater, the water reverts to the public and is available
10 for further appropriation, subject to existing rights. If, upon notice
11 by registered or certified mail to the owner of record whose right
12 has been declared forfeited, the owner of record fails to appeal the
13 ruling in the manner provided for in NRS 533.450, and within the
14 time provided for therein, the forfeiture becomes final. The failure
15 to receive a notice pursuant to this subsection does not nullify the
16 forfeiture or extend the time necessary to work the forfeiture of a
17 water right.

18 2. The State Engineer may, upon the request of the holder of
19 any right described in subsection 1, extend the time necessary to
20 work a forfeiture under that subsection if the request is made before
21 the expiration of the time necessary to work a forfeiture. The State
22 Engineer may grant, upon request and for good cause shown, any
23 number of extensions, but a single extension must not exceed 1 year.
24 In determining whether to grant or deny a request, the State
25 Engineer shall, among other reasons, consider:

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

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

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

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

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

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

44 3. If the failure to use the water pursuant to subsection 1 is
45 because of the use of center-pivot irrigation before July 1, 1983, and



1 such use could result in a forfeiture of a portion of a right, the State
2 Engineer shall, by registered or certified mail, send to the owner of
3 record a notice of intent to declare a forfeiture. The notice must
4 provide that the owner has at least 1 year after the date of the notice
5 to use the water beneficially or apply for additional relief pursuant
6 to subsection 2 before forfeiture of the owner's right is declared by
7 the State Engineer.

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

20 **Sec. 4.** (Deleted by amendment.)

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

