

SENATE BILL NO. 176—SENATOR GOICOECHEA

FEBRUARY 20, 2023

Referred to Committee on Natural Resources

SUMMARY—Establishes provisions relating to the conservation of groundwater. (BDR 48-79)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: Contains Appropriation not included in Executive Budget.

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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; creating the Account for Purchasing and Retiring Water Rights; establishing the Purchasing and Retiring Water Rights Program; requiring the State Engineer to purchase and retire certain water rights with money from the Account; authorizing the State Engineer to use money in a basin well account for the purchase of water rights under certain circumstances; making an appropriation; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, any person who wishes to appropriate public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, must apply to the State Engineer for a permit to do so. (NRS 533.325) Existing law further provides that all underground waters within the boundaries of the State are subject to appropriation for beneficial use only under the laws of this State relating to the appropriation and use of water. (NRS 534.020) **Section 5** of this bill creates the Account for Purchasing and Retiring Water Rights, to be administered by the State Engineer, and requires that the money in the Account only be expended for the purchase of water rights in groundwater basins that are over appropriated. **Section 6** of this bill establishes the Purchasing and Retiring Water Rights Program, to be administered by the State Engineer, and establishes requirements for the purchase and retirement of water rights by the State Engineer. **Section 6** also requires the State Engineer to adopt regulations to carry out the Purchasing and Retiring Water Rights Program. **Section 8** of this bill makes a conforming change to require that such regulations be adopted in accordance with the requirements of the Nevada Administrative Procedures Act.

Under existing law, a board of county commissioners may levy certain special assessments for certain expenses relating to the groundwater basin which must be



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deposited in the State Treasury for credit to the basin well account for that groundwater basin. (NRS 534.040) **Section 7** of this bill provides that, upon the approval of the board of county commissioners, the State Engineer may use the money in the basin well account to purchase and retire water rights in that particular groundwater basin.

**Sections 1-3** of this bill prohibit the appropriation of water that has been withdrawn pursuant to the Purchasing and Retiring Water Rights Program.

**Section 9** of this bill makes an appropriation to the Account for Purchasing and Retiring Water Rights.

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

**Section 1.** NRS 533.030 is hereby amended to read as follows:  
533.030 1. Subject to existing rights, and except as otherwise provided in this section and NRS 533.0241, 533.027 and 533.028, *and section 6 of this act*, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.

2. The use of water, from any stream system as provided in this chapter and from underground water as provided in NRS 534.080, for any recreational purpose, or the use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus, is hereby declared to be a beneficial use. As used in this subsection:

(a) "Developed shortage supply" has the meaning ascribed to it in Volume 73 of the Federal Register at page 19884, April 11, 2008, and any subsequent amendment thereto.

(b) "Intentionally created surplus" has the meaning ascribed to it in Volume 73 of the Federal Register at page 19884, April 11, 2008, and any subsequent amendment thereto.

3. Except as otherwise provided in subsection 4, in any county whose population is 700,000 or more:

(a) The board of county commissioners may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any artificially created lake or stream located within the unincorporated areas of the county.

(b) The governing body of a city may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any artificially created lake or stream located within the boundaries of the city.

4. In any county whose population is 700,000 or more, the provisions of subsection 1 and of any ordinance adopted pursuant to subsection 3 do not apply to:

(a) Water stored in an artificially created reservoir for use in flood control, in meeting peak water demands or for purposes relating to the treatment of sewage;



- (b) Water used in a mining reclamation project; or
- (c) A body of water located in a recreational facility that is open to the public and owned or operated by the United States or the State of Nevada.

**Sec. 2.** NRS 533.370 is hereby amended to read as follows:

533.370 1. Except as otherwise provided in this section and NRS 533.0241, 533.345, 533.371, 533.372 and 533.503, *and section 6 of this act*, the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if:

(a) The application is accompanied by the prescribed fees;

(b) The proposed use or change, if within an irrigation district, does not adversely affect the cost of water for other holders of water rights in the district or lessen the efficiency of the district in its delivery or use of water; and

(c) The applicant provides proof satisfactory to the State Engineer of the applicant's:

(1) Intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and

(2) Financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

2. Except as otherwise provided in subsection 10, ~~[where there]~~ *the State Engineer shall reject an application and refuse to issue the requested permit if:*

(a) *There* is no unappropriated water in the proposed source of supply ~~[, where the]~~ ;

(b) *The* groundwater that has not been committed for use has been reserved pursuant to NRS 533.0241 ;

(c) *The groundwater has been withdrawn pursuant to section 6 of this act;* or ~~[where its]~~

(d) *The* proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells as set forth in NRS 533.024, or threatens to prove detrimental to the public interest ~~. [, the State Engineer shall reject the application and refuse to issue the requested permit.]~~

↪ If a previous application for a similar use of water within the same basin has been rejected on those grounds, the new application may be denied without publication.

3. In addition to the criteria set forth in subsections 1 and 2, in determining whether an application for an interbasin transfer of groundwater must be rejected pursuant to this section, the State Engineer shall consider:



(a) Whether the applicant has justified the need to import the water from another basin;

(b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;

(c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;

(d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and

(e) Any other factor the State Engineer determines to be relevant.

4. Except as otherwise provided in this subsection and subsections 6 and 10 and NRS 533.365, the State Engineer shall approve or reject each application within 2 years after the final date for filing a protest. The State Engineer may postpone action:

(a) Upon written authorization to do so by the applicant.

(b) If an application is protested.

(c) If the purpose for which the application was made is municipal use.

(d) In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368.

(e) Where court actions or adjudications are pending, which may affect the outcome of the application.

(f) In areas in which adjudication of vested water rights is deemed necessary by the State Engineer.

(g) On an application for a permit to change a vested water right in a basin where vested water rights have not been adjudicated.

(h) Where authorized entry to any land needed to use the water for which the application is submitted is required from a governmental agency.

(i) On an application for which the State Engineer has required additional information pursuant to NRS 533.375.

5. If the State Engineer does not act upon an application in accordance with subsections 4 and 6, the application remains active until approved or rejected by the State Engineer.

6. Except as otherwise provided in this subsection and subsection 10, the State Engineer shall approve or reject, within 6 months after the final date for filing a protest, an application filed to change the point of diversion of water already appropriated when the existing and proposed points of diversion are on the same property for which the water has already been appropriated under the existing water right or the proposed point of diversion is on real



1 property that is proven to be owned by the applicant and is  
2 contiguous to the place of use of the existing water right. The State  
3 Engineer may postpone action on the application pursuant to  
4 subsection 4.

5 7. If the State Engineer has not approved, rejected or held a  
6 hearing on an application within 7 years after the final date for filing  
7 a protest, the State Engineer shall cause notice of the application to  
8 be republished pursuant to NRS 533.360 immediately preceding the  
9 time at which the State Engineer is ready to approve or reject  
10 the application. The cost of the republication must be paid by the  
11 applicant. After such republication, a protest may be filed in  
12 accordance with NRS 533.365.

13 8. If a hearing is held regarding an application, the decision of  
14 the State Engineer must be in writing and include findings of fact,  
15 conclusions of law and a statement of the underlying facts  
16 supporting the findings of fact. The written decision may take the  
17 form of a transcription of an oral ruling. The rejection or approval of  
18 an application must be endorsed on a copy of the original  
19 application, and a record must be made of the endorsement in the  
20 records of the State Engineer. The copy of the application so  
21 endorsed must be returned to the applicant. Except as otherwise  
22 provided in subsection 11, if the application is approved, the  
23 applicant may, on receipt thereof, proceed with the construction of  
24 the necessary works and take all steps required to apply the water to  
25 beneficial use and to perfect the proposed appropriation. If the  
26 application is rejected, the applicant may take no steps toward  
27 the prosecution of the proposed work or the diversion and use of the  
28 public water while the rejection continues in force.

29 9. If a person is the successor in interest of an owner of a water  
30 right or an owner of real property upon which a domestic well is  
31 located and if the former owner of the water right or real property on  
32 which a domestic well is located had previously filed a written  
33 protest against the granting of an application, the successor in  
34 interest must be allowed to pursue that protest in the same manner  
35 as if the successor in interest were the former owner whose interest  
36 he or she succeeded. If the successor in interest wishes to pursue the  
37 protest, the successor in interest must notify the State Engineer in a  
38 timely manner on a form provided by the State Engineer.

39 10. The provisions of subsections 1 to 9, inclusive, do not  
40 apply to an application for an environmental permit or a temporary  
41 permit issued pursuant to NRS 533.436 or 533.504.

42 11. The provisions of subsection 8 do not authorize the  
43 recipient of an approved application to use any state land  
44 administered by the Division of State Lands of the State Department



1 of Conservation and Natural Resources without the appropriate  
2 authorization for that use from the State Land Registrar.

3 12. As used in this section, “domestic well” has the meaning  
4 ascribed to it in NRS 534.350.

5 **Sec. 3.** NRS 533.371 is hereby amended to read as follows:

6 533.371 The State Engineer shall reject the application and  
7 refuse to issue a permit to appropriate water for a specified period if  
8 the State Engineer determines that:

9 1. The application is incomplete;

10 2. The prescribed fees have not been paid;

11 3. The proposed use is not temporary;

12 4. There is no water available from the proposed source of  
13 supply without exceeding the perennial yield or safe yield of that  
14 source;

15 5. The groundwater that has not been committed for use from  
16 the proposed source of supply has been reserved pursuant to  
17 NRS 533.0241;

18 6. *The groundwater has been withdrawn pursuant to section*  
19 *6 of this act;*

20 7. The proposed use conflicts with existing rights; or

21 ~~7.7~~ 8. The proposed use threatens to prove detrimental to the  
22 public interest.

23 **Sec. 4.** Chapter 534 of NRS is hereby amended by adding  
24 thereto the provisions set forth as sections 5 and 6 of this act.

25 **Sec. 5. 1.** *The Account for Purchasing and Retiring Water*  
26 *Rights is hereby created in the State General Fund.*

27 2. *The Account for Purchasing and Retiring Water Rights*  
28 *must be administered by the State Engineer, who may apply for*  
29 *and accept any gift, donation, bequest, grant or other source of*  
30 *money for deposit in the Account for Purchasing and Retiring*  
31 *Water Rights.*

32 3. *The money in the Account for Purchasing and Retiring*  
33 *Water Rights must only be used to purchase water rights pursuant*  
34 *to section 6 of this act.*

35 4. *The interest and income earned on the money in the*  
36 *Account for Purchasing and Retiring Water Rights, after*  
37 *deducting any applicable charges, must be credited to the Account*  
38 *for Purchasing and Retiring Water Rights.*

39 5. *Any money remaining in the Account for Purchasing and*  
40 *Retiring Water Rights at the end of a fiscal year does not revert to*  
41 *the State General Fund, and the balance in the Account for*  
42 *Purchasing and Retiring Water Rights must be carried forward to*  
43 *the next fiscal year.*

44 6. *The State Engineer may request an allocation by the*  
45 *Interim Finance Committee from the Contingency Account*



pursuant to NRS 353.266, 353.268 and 353.269 if the balance in the Account for Purchasing and Retiring Water Rights:

(a) Is less than \$250,000; or

(b) Is not sufficient to purchase water rights pursuant to section 6 of this act.

**Sec. 6. 1. The Purchasing and Retiring Water Rights Program is hereby established for the purpose of purchasing and retiring water rights in groundwater basins where there is an insufficient supply of water available to serve all vested rights, claims of vested rights, permits, certificates, protectable interests in domestic wells in the basin and to address and avoid conflicts with existing rights or detriments to the public interest, including, without limitation, detriments to the environmental resources of this State.**

**2. The Program must be administered by the State Engineer. In administering the Program, the State Engineer shall, to the extent money is available in the Account for Purchasing and Retiring Water Rights created by section 5 of this act, purchase and retire water rights from persons willing to sell according to the following order of priority:**

(a) Groundwater basins where groundwater withdrawals have consistently exceeded the available supply of water and to address conflicts with existing rights.

(b) Any other groundwater basins where:

(1) Certified or permitted rights to appropriate water would, if withdrawn, consistently exceed the available supply of water; and

(2) The State Engineer determines retirement of water rights is necessary to address or avoid conflicts with existing rights or detriments to the public interest, including, without limitation, detriments to the environmental resources of this State.

**3. The State Engineer shall retire all water rights purchased pursuant to this section and withdraw that groundwater from appropriation. Groundwater that has been withdrawn pursuant to this section is not available for any use.**

**4. Before purchasing and retiring a water right pursuant to this section, the State Engineer shall consult with the board of commissioners of the groundwater basin in which the water right is located and the groundwater board, if such a groundwater board has been established pursuant to NRS 534.035, to attempt to address any issues relating to the purchase and retirement of the water right in the groundwater basin.**

**5. The State Engineer shall adopt such regulations as are necessary to carry out the provisions of this section. Such regulations must be adopted in accordance with the provisions of**



*chapter 233B of NRS and must include, without limitation, procedures that will be used by the State Engineer to determine the amount the State Engineer will pay for a water right.*

**Sec. 7.** NRS 534.040 is hereby amended to read as follows:

534.040 1. Upon the initiation of the administration of this chapter in any particular basin, and where the investigations of the State Engineer have shown the necessity for the supervision over the waters of that basin, the State Engineer may employ a well supervisor and other necessary assistants, who shall execute the duties as provided in this chapter under the direction of the State Engineer. The salaries of the well supervisor and the assistants of the well supervisor must be fixed by the State Engineer. The well supervisor and assistants are exempt from the provisions of chapter 284 of NRS.

2. If the money available from the license fees provided for in NRS 534.140 is not sufficient to pay those salaries, together with necessary expenses, including the compensation and other expenses of the Well Drillers' Advisory Board, the board of county commissioners shall, except as otherwise provided in this subsection, levy a special assessment annually, or at such time as the assessment is needed, upon all taxable property situated within the confines of the area designated by the State Engineer to come under the provisions of this chapter in an amount as is necessary to pay such salaries and expenses. If the board of county commissioners determines that the amount of a special assessment levied upon a property owner pursuant to this section when combined with the amount of all other taxes and assessments levied upon the property owner is less than the cost of collecting the special assessment levied pursuant to this subsection, the board of county commissioners may exempt the property owner from the assessment and appropriate money from the general fund of the county to pay the cost of the assessment.

3. Except as otherwise provided in subsection 2, in designated areas within which the use of groundwater is predominantly for agricultural purposes, any special assessment levied pursuant to this section must be charged against each water user who has a permit to appropriate water or a perfected water right, and the charge against each water user must be based upon the proportion which his or her water right bears to the aggregate water rights in the designated area. The minimum charge is \$1.

4. The salaries and expenses may be paid by the State Engineer from the Water Distribution Revolving Account pending the levy and collection of an assessment levied pursuant to this section.

5. Except as otherwise provided in subsection 2, if a special assessment is levied pursuant to this section, the proper officers of





1 the county shall levy and collect the special assessment as other  
2 special assessments are levied and collected, and the assessment is a  
3 lien upon the property.

4 6. Any special assessment collected pursuant to this section  
5 must be deposited with the State Treasurer for credit to the Water  
6 District Account to be accounted for in basin well accounts.

7 7. Upon determination and certification by the State Engineer  
8 of the amount to be budgeted for the current or ensuing fiscal year  
9 for the purpose of paying the per diem and travel allowances of the  
10 groundwater board and employing consultants or other help needed  
11 to fulfill its responsibilities, the State Controller shall transfer that  
12 amount to a separate operating account for that fiscal year for the  
13 groundwater basin. Claims against the account must be approved by  
14 the groundwater board and paid as other claims against the State are  
15 paid. The State Engineer may use money in a particular basin well  
16 account to ~~support~~ :

17 (a) *Support* an activity outside the basin in which the money is  
18 collected if the activity bears a direct relationship to the  
19 responsibilities or activities of the State Engineer regarding the  
20 particular groundwater basin ~~to~~ ; or

21 (b) *Upon the approval of the board of county commissioners of*  
22 *the groundwater basin, purchase and retire water rights pursuant*  
23 *to section 6 of this act.*

24 **Sec. 8.** NRS 233B.039 is hereby amended to read as follows:

25 233B.039 1. The following agencies are entirely exempted  
26 from the requirements of this chapter:

27 (a) The Governor.

28 (b) Except as otherwise provided in NRS 209.221 and 209.2473,  
29 the Department of Corrections.

30 (c) The Nevada System of Higher Education.

31 (d) The Office of the Military.

32 (e) The Nevada Gaming Control Board.

33 (f) Except as otherwise provided in NRS 368A.140 and 463.765,  
34 the Nevada Gaming Commission.

35 (g) Except as otherwise provided in NRS 425.620, the Division  
36 of Welfare and Supportive Services of the Department of Health and  
37 Human Services.

38 (h) Except as otherwise provided in NRS 422.390, the Division  
39 of Health Care Financing and Policy of the Department of Health  
40 and Human Services.

41 (i) Except as otherwise provided in NRS 533.365, *and section 6*  
42 *of this act*, the Office of the State Engineer.

43 (j) The Division of Industrial Relations of the Department of  
44 Business and Industry acting to enforce the provisions of  
45 NRS 618.375.



(k) The Administrator of the Division of Industrial Relations of the Department of Business and Industry in establishing and adjusting the schedule of fees and charges for accident benefits pursuant to subsection 2 of NRS 616C.260.

(l) The Board to Review Claims in adopting resolutions to carry out its duties pursuant to NRS 445C.310.

(m) The Silver State Health Insurance Exchange.

(n) The Cannabis Compliance Board.

2. Except as otherwise provided in subsection 5 and NRS 391.323, the Department of Education, the Board of the Public Employees' Benefits Program and the Commission on Professional Standards in Education are subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

3. The special provisions of:

(a) Chapter 612 of NRS for the adoption of an emergency regulation or the distribution of regulations by and the judicial review of decisions of the Employment Security Division of the Department of Employment, Training and Rehabilitation;

(b) Chapters 616A to 617, inclusive, of NRS for the determination of contested claims;

(c) Chapter 91 of NRS for the judicial review of decisions of the Administrator of the Securities Division of the Office of the Secretary of State; and

(d) NRS 90.800 for the use of summary orders in contested cases,

➤ prevail over the general provisions of this chapter.

4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do not apply to the Department of Health and Human Services in the adjudication of contested cases involving the issuance of letters of approval for health facilities and agencies.

5. The provisions of this chapter do not apply to:

(a) Any order for immediate action, including, but not limited to, quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the State Board of Agriculture, the State Board of Health, or any other agency of this State in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control;

(b) An extraordinary regulation of the State Board of Pharmacy adopted pursuant to NRS 453.2184;

(c) A regulation adopted by the State Board of Education pursuant to NRS 388.255 or 394.1694;

(d) The judicial review of decisions of the Public Utilities Commission of Nevada;



(e) The adoption, amendment or repeal of policies by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation pursuant to NRS 426.561 or 615.178;

(f) The adoption or amendment of a rule or regulation to be included in the State Plan for Services for Victims of Crime by the Department of Health and Human Services pursuant to NRS 217.130;

(g) The adoption, amendment or repeal of rules governing the conduct of contests and exhibitions of unarmed combat by the Nevada Athletic Commission pursuant to NRS 467.075;

(h) The adoption, amendment or repeal of regulations by the Director of the Department of Health and Human Services pursuant to NRS 447.335 to 447.350, inclusive;

(i) The adoption, amendment or repeal of standards of content and performance for courses of study in public schools by the Council to Establish Academic Standards for Public Schools and the State Board of Education pursuant to NRS 389.520;

(j) The adoption, amendment or repeal of the statewide plan to allocate money from the Fund for a Resilient Nevada created by NRS 433.732 established by the Department of Health and Human Services pursuant to paragraph (b) of subsection 1 of NRS 433.734; or

(k) The adoption or amendment of a data request by the Commissioner of Insurance pursuant to NRS 687B.404.

6. The State Board of Parole Commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

**Sec. 9.** There is hereby appropriated from the State General Fund to the Account for Purchasing and Retiring Water Rights created by section 5 of this act the sum of \$5,000,000 for the purchase of water rights pursuant to section 6 of this act.

**Sec. 10.** This act becomes effective on July 1, 2023.

