

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 Nevada Water Buy-Back Initiative and the Advisory Committee for the Nevada Water Buy-Back Initiative; requiring the Director of the State Department of Conservation and Natural Resources to purchase certain water rights with money from the Account for purposes of retiring the water rights; creating the Nevada Conservation and Recreation Program; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, any person who wishes to appropriate public waters, or to
2 change the place of diversion, manner of use or place of use of water already
3 appropriated, must apply to the State Engineer for a permit to do so. (NRS 533.325)
4 Existing law further provides that all underground waters within the boundaries of
5 the State are subject to appropriation for beneficial use only under the laws of this
6 State relating to the appropriation and use of water. (NRS 534.020) **Section 5** of
7 this bill creates the Account for Purchasing and Retiring Water Rights, to be
8 administered by the Director of the State Department of Conservation and Natural
9 Resources, and requires that the money in the Account only be expended for the
10 purchase of water rights in groundwater basins that are over appropriated. **Section 6**
11 of this bill establishes the Nevada Water Buy-Back Initiative in the Nevada
12 Conservation and Recreation Program, to be administered by the Director, and
13 establishes requirements for the purchase and retirement of water rights.
14 **Section 6.4** of this bill requires the State Engineer to retire water rights
15 purchased by the Nevada Water Buy-Back Initiative.
16 **Section 6.2** of this bill establishes the Advisory Committee for the Nevada
17 Water Buy-Back Initiative within the Department and requires the Advisory



18 Committee to consult with the Director regarding the provisions of **sections 4.5-6.6**
19 of this bill.

20 **Section 6.6** requires the Director to adopt regulations necessary to carry out the
21 provisions of **sections 4.5-6.6**. **Section 9.5** of this bill requires the Director to adopt
22 such regulations by July 1, 2025. **Section 4.5** of this bill defines certain terms
23 relating to the provisions of **sections 4.5-6.6**.

24 **Sections 1-3** of this bill prohibit the appropriation of water that has been retired
25 pursuant to the Nevada Water Buy-Back Initiative.

26 Existing law requires the Department to make grants to state agencies, local
27 governments, water conservancy districts, conservation districts and certain
28 nonprofit organizations to protect, preserve and obtain the benefits of the property
29 and natural and cultural resources of this State and requires the Director to adopt
30 regulations to make such grants. (Section 2 of chapter 480, Statutes of Nevada
31 2019, at page 2861) Existing regulations create the Nevada Conservation and
32 Recreation Program to make such grants. (LCB File No. R025-22) **Section 8.2**
33 of this bill creates the Program in statute. **Section 8.2** further provides that the
34 Program consists of a grant program to make such grants and the Nevada Water
35 Buy-Back Initiative. **Section 8.6** of this bill provides that the Program and the
36 Advisory Committee are within the Department. **Section 8.4** of this bill makes a
37 conforming change to indicate the proper placement of **section 8.2** in the Nevada
38 Revised Statutes.

39 **Section 9** of this bill makes an appropriation to the Account for Purchasing and
40 Retiring Water Rights for the costs incurred by the Director and the Nevada
41 Conservation and Recreation Program in administering the Nevada Water Buy-
42 Back Initiative and for the purchase of water rights.

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

1 **Section 1.** NRS 533.030 is hereby amended to read as follows:
2 533.030 1. Subject to existing rights, and except as otherwise
3 provided in this section and NRS 533.0241, 533.027 and 533.028,
4 *and section 6 of this act*, all water may be appropriated for
5 beneficial use as provided in this chapter and not otherwise.

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

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

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

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



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

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

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

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

15 (b) Water used in a mining reclamation project; or

16 (c) A body of water located in a recreational facility that is open
17 to the public and owned or operated by the United States or the State
18 of Nevada.

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

20 533.370 1. Except as otherwise provided in this section and
21 NRS 533.0241, 533.345, 533.371, 533.372 and 533.503, *and*
22 *section 6 of this act*, the State Engineer shall approve an application
23 submitted in proper form which contemplates the application of
24 water to beneficial use if:

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

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

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

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

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

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

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

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



1 (c) *The groundwater has been retired pursuant to section 6 of*
2 *this act;* or ~~{where its}~~

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

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

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

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

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

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

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

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

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

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

33 (b) If an application is protested.

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

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

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

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

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



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

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

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

9 6. Except as otherwise provided in this subsection and
10 subsection 10, the State Engineer shall approve or reject, within 6
11 months after the final date for filing a protest, an application filed to
12 change the point of diversion of water already appropriated when
13 the existing and proposed points of diversion are on the same
14 property for which the water has already been appropriated under
15 the existing water right or the proposed point of diversion is on real
16 property that is proven to be owned by the applicant and is
17 contiguous to the place of use of the existing water right. The State
18 Engineer may postpone action on the application pursuant to
19 subsection 4.

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

28 8. If a hearing is held regarding an application, the decision of
29 the State Engineer must be in writing and include findings of fact,
30 conclusions of law and a statement of the underlying facts
31 supporting the findings of fact. The written decision may take the
32 form of a transcription of an oral ruling. The rejection or approval of
33 an application must be endorsed on a copy of the original
34 application, and a record must be made of the endorsement in the
35 records of the State Engineer. The copy of the application so
36 endorsed must be returned to the applicant. Except as otherwise
37 provided in subsection 11, if the application is approved, the
38 applicant may, on receipt thereof, proceed with the construction of
39 the necessary works and take all steps required to apply the water to
40 beneficial use and to perfect the proposed appropriation. If the
41 application is rejected, the applicant may take no steps toward
42 the prosecution of the proposed work or the diversion and use of the
43 public water while the rejection continues in force.

44 9. If a person is the successor in interest of an owner of a water
45 right or an owner of real property upon which a domestic well is



1 located and if the former owner of the water right or real property on
2 which a domestic well is located had previously filed a written
3 protest against the granting of an application, the successor in
4 interest must be allowed to pursue that protest in the same manner
5 as if the successor in interest were the former owner whose interest
6 he or she succeeded. If the successor in interest wishes to pursue the
7 protest, the successor in interest must notify the State Engineer in a
8 timely manner on a form provided by the State Engineer.

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

12 11. The provisions of subsection 8 do not authorize the
13 recipient of an approved application to use any state land
14 administered by the Division of State Lands of the State Department
15 of Conservation and Natural Resources without the appropriate
16 authorization for that use from the State Land Registrar.

17 12. As used in this section, "domestic well" has the meaning
18 ascribed to it in NRS 534.350.

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

20 533.371 The State Engineer shall reject the application and
21 refuse to issue a permit to appropriate water for a specified period if
22 the State Engineer determines that:

- 23 1. The application is incomplete;
- 24 2. The prescribed fees have not been paid;
- 25 3. The proposed use is not temporary;
- 26 4. There is no water available from the proposed source of
27 supply without exceeding the perennial yield or safe yield of that
28 source;
- 29 5. The groundwater that has not been committed for use from
30 the proposed source of supply has been reserved pursuant to
31 NRS 533.0241;

32 6. *The groundwater has been retired pursuant to section 6 of*
33 *this act;*

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

35 ~~7.7~~ 8. The proposed use threatens to prove detrimental to the
36 public interest.

37 **Sec. 4.** Chapter 534 of NRS is hereby amended by adding
38 thereto the provisions set forth as sections 4.5 to 6.6, inclusive, of
39 this act.

40 **Sec. 4.5.** *As used in sections 4.5 to 6.6, inclusive, of this act,*
41 *unless the context otherwise requires:*

42 1. *"Department" means the State Department of*
43 *Conservation and Natural Resources.*

44 2. *"Director" means the Director of the Department.*



1 3. "Nevada Conservation and Recreation Program" or
2 "Program" means the Nevada Conservation and Recreation
3 Program created by section 8.2 of this act.

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

6 2. The Account for Purchasing and Retiring Water Rights
7 must be administered by the Director in accordance with the
8 Nevada Water Buy-Back Initiative established by section 6 of this
9 act. In addition to any direct legislative appropriation, the Director
10 may apply for and accept any gift, donation, bequest, grant,
11 federal money or other source of money for deposit in the Account
12 for Purchasing and Retiring Water Rights.

13 3. The money in the Account for Purchasing and Retiring
14 Water Rights must only be used for administering the Nevada
15 Water Buy-Back Initiative established by section 6 of this act, to
16 purchase water rights pursuant to section 6 of this act and to
17 provide matching money required as a condition of accepting any
18 source of money that would result in the retirement of water rights
19 pursuant to sections 6 and 6.4 of this act.

20 4. The money in the Account for Purchasing and Retiring
21 Water Rights or any portion of the money in the Account for
22 Purchasing and Retiring Water Rights may be invested or
23 reinvested in accordance with the provisions of chapter 355 of
24 NRS. The proceeds of such investments and the interest and
25 income earned on the money in the Account for Purchasing and
26 Retiring Water Rights, after deducting any applicable charges,
27 must be credited to the Account for Purchasing and Retiring
28 Water Rights.

29 5. Any money remaining in the Account for Purchasing and
30 Retiring Water Rights at the end of a fiscal year does not revert to
31 the State General Fund, and the balance in the Account for
32 Purchasing and Retiring Water Rights must be carried forward to
33 the next fiscal year.

34 6. The Director may enter into an agreement with a public or
35 private entity to apply for, obtain or manage any money
36 contributed to the Account for Purchasing and Retiring Water
37 Rights.

38 7. The Director may request an allocation by the Interim
39 Finance Committee from the Contingency Account pursuant to
40 NRS 353.266, 353.268 and 353.269 if the balance in the Account
41 for Purchasing and Retiring Water Rights:

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

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



1 **Sec. 6. 1.** *The Nevada Water Buy-Back Initiative is hereby*
2 *established in the Nevada Conservation and Recreation Program*
3 *for the purpose of purchasing and retiring water rights in*
4 *groundwater basins where there is an insufficient supply of water*
5 *available to serve all vested rights, claims of vested rights, permits,*
6 *certificates, protectable interests in domestic wells in the basin and*
7 *to address and avoid conflicts with existing rights or detriments to*
8 *the public interest, including, without limitation, detriments to the*
9 *natural resources of this State.*

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

16 **(a)** *Groundwater basins where groundwater withdrawals*
17 *currently exceed the available supply of water as a result of the*
18 *consistent use of certificated or permitted rights to appropriate*
19 *water and to address conflicts with existing rights or detriments to*
20 *the natural resources of this State.*

21 **(b)** *Any other groundwater basins where:*

22 **(1)** *Certificated or permitted rights to appropriate water*
23 *would, if withdrawn, exceed the available supply of water; and*

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

28 **3.** *When sufficient money is available in the Account for*
29 *Purchasing and Retiring Water Rights, the Director may accept*
30 *applications for the purchase and retirement of water rights in*
31 *accordance with any regulations adopted by the Director pursuant*
32 *to section 6.6 of this act.*

33 **Sec. 6.2. 1.** *The Advisory Committee for the Nevada Water*
34 *Buy-Back Initiative established by section 6 of this act is hereby*
35 *established within the Department. The Advisory Committee*
36 *consists of:*

37 **(a)** *The following voting members appointed by the Director:*

38 **(1)** *One member who represents a nonprofit conservation*
39 *organization;*

40 **(2)** *One member who represents a political subdivision of*
41 *the State of Nevada that manages a regional water system in a*
42 *county whose population is 100,000 or more;*

43 **(3)** *One member who represents a water authority in a*
44 *county whose population is less than 100,000;*

45 **(4)** *One member who represents agricultural interests; and*



1 (5) *One member who represents natural resources*
2 *interests; and*

3 (b) *The following ex officio nonvoting members:*

4 (1) *The State Engineer or his or her designee; and*

5 (2) *The State Land Registrar or his or her designee.*

6 2. *The Advisory Committee shall consult with the Director*
7 *on:*

8 (a) *The adoption of regulations required pursuant to section*
9 *6.6 of this act; and*

10 (b) *The administration of the Nevada Water Buy-Back*
11 *Initiative established by section 6 of this act.*

12 3. *While engaged in the business of the Advisory Committee,*
13 *each voting member of the Advisory Committee is entitled to*
14 *receive a salary of not more than \$80 per day, as established by the*
15 *Department, and the per diem allowance and travel expenses*
16 *provided for state officers and employees generally.*

17 **Sec. 6.4.** *The State Engineer shall retire all water rights*
18 *purchased pursuant to section 6 of this act through revocation or*
19 *relinquishment of the water right or by using any other*
20 *appropriate mechanism, as determined by the State Engineer, and*
21 *preclude that groundwater from appropriation. Groundwater that*
22 *has been retired pursuant to this section is not available for any*
23 *use.*

24 **Sec. 6.6.** 1. *The Director shall adopt such regulations as*
25 *are necessary to carry out the provisions of sections 4.5 to 6.6,*
26 *inclusive, of this act, which must include, without limitation:*

27 (a) *The process for accepting applications for the purchase*
28 *and retirement of water rights pursuant to section 6 of this act;*

29 (b) *The manner in which the valuation of water rights will be*
30 *conducted for the Nevada Water Buy-Back Initiative established*
31 *by section 6 of this act;*

32 (c) *Provisions to ensure that the retirement of water rights is*
33 *consistent with the purposes of the Nevada Water Buy-Back*
34 *Initiative, including, without limitation, addressing or avoiding*
35 *conflicts with existing rights or detriments to the public interest or*
36 *the natural resources of this State;*

37 (d) *Provisions to ensure compliance with any requirements or*
38 *conditions of any gift, donation, bequest, grant, federal money or*
39 *other source of money in administering the Account for*
40 *Purchasing and Retiring Water Rights created by section 5 of this*
41 *act;*

42 (e) *The methods of purchasing water rights by the Nevada*
43 *Water Buy-Back Initiative pursuant to section 6 of this act which*
44 *must be consistent with the mechanisms by which the water right*



1 *will be retired by the State Engineer in accordance with section 6.4*
2 *of this act; and*

3 *(f) The process for a groundwater board or board of county*
4 *commissioners to consult and support the purchase of water rights*
5 *in a basin.*

6 *2. The Director shall consult with the Advisory Committee for*
7 *the Nevada Water Buy-Back Initiative established by section 6.2 of*
8 *this act in adopting regulations pursuant to this section.*

9 **Sec. 7.** (Deleted by amendment.)

10 **Sec. 8.** (Deleted by amendment.)

11 **Sec. 8.2.** Chapter 232 of NRS is hereby amended by adding
12 thereto a new section to read as follows:

13 *1. The Nevada Conservation and Recreation Program is*
14 *hereby created within the Department to protect, preserve and*
15 *obtain the benefits of the property and natural and cultural*
16 *resources of this State. The Director shall administer the Program.*

17 *2. The Nevada Conservation and Recreation Program*
18 *consists of:*

19 *(a) A grant program to make grants in accordance with*
20 *subsections 8, 9 and 10 of section 2 of chapter 480, Statutes of*
21 *Nevada 2019, at page 2861; and*

22 *(b) The Nevada Water Buy-Back Initiative established by*
23 *section 6 of this act.*

24 *3. The Director may adopt regulations to carry out the*
25 *provisions of this section.*

26 **Sec. 8.4.** NRS 232.010 is hereby amended to read as follows:

27 232.010 As used in NRS 232.010 to 232.162, inclusive ~~§~~ ,
28 *and section 8.2 of this act:*

29 1. "Department" means the State Department of Conservation
30 and Natural Resources.

31 2. "Director" means the Director of the State Department of
32 Conservation and Natural Resources.

33 **Sec. 8.6.** NRS 232.090 is hereby amended to read as follows:

34 232.090 1. The Department consists of the Director and the
35 following:

36 (a) The Division of Water Resources.

37 (b) The Division of State Lands.

38 (c) The Division of Forestry.

39 (d) The Division of State Parks.

40 (e) The Division of Environmental Protection.

41 (f) The Office of Historic Preservation.

42 (g) The Division of Outdoor Recreation.

43 (h) The Division of Natural Heritage.

44 (i) Such other divisions as the Director may from time to time
45 establish.



1 2. The State Environmental Commission, the State
2 Conservation Commission, the Commission for Cultural Centers
3 and Historic Preservation, the Commission on Off-Highway
4 Vehicles, the Conservation Districts Program, the Sagebrush
5 Ecosystem Council , *the Nevada Conservation and Recreation*
6 *Program, the Advisory Committee for the Nevada Water Buy-Back*
7 *Initiative* and the Board to Review Claims are within the
8 Department.

9 **Sec. 9.** There is hereby appropriated from the State General
10 Fund to the Account for Purchasing and Retiring Water Rights
11 created by section 5 of this act the sum of \$5,000,000 for the
12 reasonable costs incurred by the Director of the State Department of
13 Conservation and Natural Resources and the Nevada Conservation
14 and Recreation Program created by section 8.2 of this act in
15 administering the Nevada Water Buy-Back Initiative established
16 pursuant to section 6 of this act and for the purchase of water rights
17 pursuant to section 6 of this act.

18 **Sec. 9.5.** The Director of the State Department of
19 Conservation and Natural Resources shall, on or before July 1,
20 2025, adopt the regulations which are required by section 6.6 of this
21 act.

22 **Sec. 10.** 1. This section becomes effective upon passage and
23 approval.

24 2. Sections 1 to 9.5, inclusive, of this act become effective:

25 (a) Upon passage and approval for the purpose of adopting any
26 regulations and performing any other preparatory administrative
27 tasks to carry out the provisions of this act; and

28 (b) On July 1, 2023, for all other purposes.

