
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 certain groundwater basins as critical management areas; requiring the State Engineer to grant a request for an extension of time to work a forfeiture 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:

- 1 Under existing law, the State Engineer has various powers and duties with
- 2 respect to regulating the groundwater in this State. (Chapter 534 of NRS) **Section 4**
- 3 of this bill requires the State Engineer to designate as a critical management area
- 4 any basin in which withdrawals of groundwater consistently exceed the perennial
- 5 yield of the basin.
- 6 Under existing law, the State Engineer has the discretion whether to grant a
- 7 request for the extension of the time necessary to work a forfeiture of a water right.
- 8 (NRS 534.090) **Section 2** of this bill requires the State Engineer to extend the time
- 9 necessary to work a forfeiture in a basin which is designated as a critical
- 10 management area if the holder of the right pays a fee that is deposited in an account
- 11 in the State General Fund, the money in which may only be used to pay the costs of
- 12 retiring water rights in the particular designated basin where the water right is
- 13 located. **Section 2** further requires the State Engineer to adopt a sliding scale for
- 14 such a fee, based on the priority of the right.



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

1 **Section 1.** NRS 533.435 is hereby amended to read as follows:
2 533.435 1. The State Engineer shall collect the following
3 fees:
4
5 For examining and filing an application for a permit
6 to appropriate water\$300.00
7 This fee includes the cost of publication,
8 which is \$50.
9 For reviewing a corrected application or map, or
10 both, in connection with an application for a
11 permit to appropriate water 100.00
12 For examining and acting upon plans and
13 specifications for construction of a dam 1,000.00
14 For examining and filing an application for each
15 permit to change the point of diversion, manner
16 of use or place of use of an existing right 200.00
17 This fee includes the cost of the publication
18 of the application, which is \$50.
19 For issuing and recording each permit to
20 appropriate water for any purpose, except for
21 generating hydroelectric power which results in
22 nonconsumptive use of the water or watering
23 livestock or wildlife purposes 300.00
24 plus \$3 per acre-foot approved or fraction
25 thereof.
26 For issuing and recording each permit to change an
27 existing right whether temporary or permanent
28 for any purpose, except for generating
29 hydroelectric power which results in
30 nonconsumptive use of the water, for watering
31 livestock or wildlife purposes which change the
32 point of diversion or place of use only 250.00
33 plus \$3 per acre-foot approved or fraction
34 thereof.
35 For issuing and recording each permit to
36 appropriate or change the point of diversion or
37 place of use of an existing right only whether
38 temporary or permanent for watering livestock
39 or wildlife purposes 200.00
40 plus \$50 for each second-foot of water
41 approved or fraction thereof.



1	For issuing and recording each permit to	
2	appropriate or change an existing right whether	
3	temporary or permanent for water for generating	
4	hydroelectric power which results in	
5	nonconsumptive use of the water.....	\$400.00
6	plus \$50 for each second-foot of water	
7	approved or fraction thereof.	
8	For issuing a waiver in connection with an	
9	application to drill a well	100.00
10	For filing a secondary application under a reservoir	
11	permit.....	250.00
12	For approving and recording a secondary permit	
13	under a reservoir permit.....	450.00
14	For reviewing each tentative subdivision map.....	150.00
15	plus \$1 per lot.	
16	For reviewing and approving each final subdivision	
17	map.....	100.00
18	For storage approved under a dam permit for	
19	privately owned nonagricultural dams which	
20	store more than 50 acre-feet.....	400.00
21	plus \$1 per acre-foot storage capacity. This	
22	fee includes the cost of inspection and	
23	must be paid annually.	
24	For filing proof of completion of work	50.00
25	For filing proof of beneficial use	50.00
26	For filing proof of resumption of a water right	300.00
27	For filing any protest.....	25.00
28	For <i>Except as otherwise provided in section 2 of</i>	
29	<i>this act, for</i> filing any application for extension	
30	of time within which to file proofs, for each year	
31	for which the extension of time is sought	100.00
32	For reviewing a cancellation of a water right	
33	pursuant to a petition for review	300.00
34	For examining and filing a report of conveyance	
35	filed pursuant to paragraph (a) of subsection 1 of	
36	NRS 533.384.....	100.00
37	plus \$20 per conveyance document	
38	For filing any other instrument	10.00
39	For making a copy of any document recorded or	
40	filed in the Office of the State Engineer, for the	
41	first page.....	1.00
42	For each additional page20
43	For certifying to copies of documents, records or	
44	maps, for each certificate	5.00



1	For each blueprint copy of any drawing or map, per	
2	square foot.....	\$5.00
3	The minimum charge for a blueprint copy, per print	3.00
4	For colored mylar plots	10.00

5
6 2. When fees are not specified in subsection 1 for work
7 required of the Office of the State Engineer, the State Engineer shall
8 collect the actual cost of the work.

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

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

30 *1. In a basin that has been designated as a critical*
31 *management area by the State Engineer pursuant to subsection 7*
32 *of NRS 534.110, the State Engineer shall adopt, by regulation, a*
33 *sliding scale for the amount of the fee for an application for*
34 *extension of time necessary to work a forfeiture for each year for*
35 *which such an extension of time is sought pursuant to this section.*
36 *The sliding scale must be based upon the priority in the basin of*
37 *the right for which the extension is requested such that the*
38 *amount of the fee for an application for an extension of time for a*
39 *prior right in the basin is less than the fee for an application for*
40 *an extension of time for a right that was acquired later in the*
41 *basin.*

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



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

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

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

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

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

23 6. *The State Engineer shall establish, by regulation, the*
24 *procedure for retiring water rights using fees collected pursuant to*
25 *this section.*

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

27 534.090 1. Except as otherwise provided in this section,
28 failure for 5 successive years after April 15, 1967, on the part of the
29 holder of any right, whether it is an adjudicated right, an
30 unadjudicated right or a permitted right, and further whether the
31 right is initiated after or before March 25, 1939, to use beneficially
32 all or any part of the underground water for the purpose for which
33 the right is acquired or claimed, works a forfeiture of both
34 undetermined rights and determined rights to the use of that water to
35 the extent of the nonuse. If the records of the State Engineer or any
36 other documents specified by the State Engineer indicate at least 4
37 consecutive years, but less than 5 consecutive years, of nonuse of all
38 or any part of a water right which is governed by this chapter, the
39 State Engineer shall notify the owner of the water right, as
40 determined in the records of the Office of the State Engineer, by
41 registered or certified mail that the owner has 1 year after the date of
42 the notice in which to use the water right beneficially and to provide
43 proof of such use to the State Engineer or apply for relief pursuant
44 to subsection 2 to avoid forfeiting the water right. If, after 1 year
45 after the date of the notice, proof of beneficial use is not sent to the



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

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

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

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

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

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

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

35 ➔ The State Engineer shall notify, by registered or certified mail,
36 the owner of the water right, as determined in the records of the
37 Office of the State Engineer, of whether the State Engineer has
38 granted or denied the holder's request for an extension pursuant to
39 this subsection.

40 3. If the failure to use the water pursuant to subsection 1 is
41 because of the use of center-pivot irrigation before July 1, 1983, and
42 such use could result in a forfeiture of a portion of a right, the State
43 Engineer shall, by registered or certified mail, send to the owner of
44 record a notice of intent to declare a forfeiture. The notice must
45 provide that the owner has at least 1 year after the date of the notice



1 to use the water beneficially or apply for additional relief pursuant
2 to subsection 2 before forfeiture of the owner's right is declared by
3 the State Engineer.

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

16 **Sec. 4.** NRS 534.110 is hereby amended to read as follows:

17 534.110 1. The State Engineer shall administer this chapter
18 and shall prescribe all necessary regulations within the terms of this
19 chapter for its administration.

20 2. The State Engineer may:

21 (a) Require periodical statements of water elevations, water
22 used, and acreage on which water was used from all holders of
23 permits and claimants of vested rights.

24 (b) Upon his or her own initiation, conduct pumping tests to
25 determine if overpumping is indicated, to determine the specific
26 yield of the aquifers and to determine permeability characteristics.

27 3. The State Engineer shall determine whether there is
28 unappropriated water in the area affected and may issue permits
29 only if the determination is affirmative. The State Engineer may
30 require each applicant to whom a permit is issued for a well:

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

32 (b) Whose reasonably expected rate of diversion is one-half
33 cubic foot per second or more,

34 ➔ to report periodically to the State Engineer concerning the effect
35 of that well on other previously existing wells that are located within
36 2,500 feet of the well.

37 4. It is a condition of each appropriation of groundwater
38 acquired under this chapter that the right of the appropriator relates
39 to a specific quantity of water and that the right must allow for a
40 reasonable lowering of the static water level at the appropriator's
41 point of diversion. In determining a reasonable lowering of the static
42 water level in a particular area, the State Engineer shall consider the
43 economics of pumping water for the general type of crops growing
44 and may also consider the effect of using water on the economy of
45 the area in general.



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

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

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

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

34 8. In any basin or portion thereof in the State designated by the
35 State Engineer, the State Engineer may restrict drilling of wells in
36 any portion thereof if the State Engineer determines that additional
37 wells would cause an undue interference with existing wells. Any
38 order or decision of the State Engineer so restricting drilling of such
39 wells may be reviewed by the district court of the county pursuant to
40 NRS 533.450.

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

