



## WORK SESSION DOCUMENT

Legislative Commission's Committee to  
Study the Use, Management, and Allocation of Water Resources

Senate Concurrent Resolution No. 26  
(File No. 100, *Statutes of Nevada 2005*)

**June 21, 2006**

The following "Work Session Document" has been prepared by the Chairman and staff of the Legislative Commission's Committee to Study the Use, Management, and Allocation of Water Resources. It is designed to assist the Committee members in determining which recommendations will be forwarded to the 2007 Session of the Nevada Legislature and what other actions the Committee will endorse. Each item in this document may be the subject of further discussion, refinement, or action.

The recommendations do not necessarily have the support or opposition of the Committee. Rather, these possible actions are compiled so the members may review them to decide if they should be adopted, changed, rejected, or further considered. The members of the Committee may vote to send as many Committee statements or letters as they choose; however, pursuant to *Nevada Revised Statutes* (NRS) 218.2429, the Committee is limited to five bill draft requests (BDRs), including requests for the drafting of legislative resolutions. The recommendations have been grouped by topic and are not preferentially ordered.

Additionally, although possible actions are identified for each recommendation, the Committee may choose to recommend any of the following actions: (1) draft legislation; (2) draft a resolution; (3) send a letter; or (4) include a statement in the final report.

As required by S.C.R. 26, any recommended legislation must be approved by a majority of the members of the Senate and a majority of the members of the Assembly appointed to the Committee.

The source of each recommendation is noted in parentheses, as is the month and location of the Committee meeting at which the recommendation was made. Please note that a recommendation may have been modified during the preparation of the work session document for a variety of reasons, including without limitation: (1) through combination with similar proposals; (2) by specification of an appropriation; or (3) by the addition of details needed for drafting purposes. Further, some recommendations may contain unquantified or unknown fiscal impacts. Committee members are advised that Legislative Counsel Bureau staff will coordinate with the interested parties to obtain fiscal estimates, where appropriate or feasible, for inclusion in the final report.

Finally, please note that during the drafting process, specific details of approved requests for legislation or other Committee action may be further clarified by Committee staff in consultation with the Chairman or others, as appropriate. Also, some recommendations may include references to specific chapters or statutes. However, as part of the bill drafting process, amendments to other related chapters or sections of the NRS may be added to fully implement the recommendation.

## Water Law and Administration

1. **Amend the statutes** relating to the protest procedures for water rights applications to require that the protest period be reopened for 30 days if an application is not processed within 7 years. Further, if a protest is based on impacts to a specific property, amend the statutes to allow successorship of protestant status to successive owners of the property (by sale or inheritance). The burden of notifying the Division of Water Resources, State Department of Conservation and Natural Resources (SDCNR), of a claim of succession and any change of address shall be on the person seeking successor status. See NRS 533.365. (Central Nevada Regional Water Authority, Las Vegas, May 2006)

Note: The effective date of any change to the protest period should be considered. Options include making the changes effective as to: (1) all pending applications; (2) pending applications for which hearings have not been scheduled; or (3) only applications filed after effective date of bill.

2. **Amend statutes** to authorize the State Engineer to order any person in violation of the provisions of NRS Chapters 533, 534, 535, 536 and *Nevada Administrative Code* (NAC) Chapters 534 and 535 to: (a) pay an administrative fine not to exceed \$10,000 per day for each violation; and (b) be liable for any expense incurred by the Division of Water Resources, SDCNR, in investigating and stopping the violation. Any appeal of a violation would be done through the courts under NRS 533.450. Administrative details for addressing violations, assessing fines or penalties, and procedures would be done through the promulgation of rules and regulations. (State Engineer, Las Vegas, May 2006)

See attached memorandum from State Engineer under Tab A.

3. **Amend the statutes** to allow local governments to “hold” water rights for a longer time recognizing their extended planning horizon and give private parties less time to prove beneficial use. (Bevan Lister, Caliente, February 2006)
4. **Amend the statutes** to require evidence of a 100-year water supply as a condition of approving new subdivisions, using the Arizona model. (Val Taylor for Snake Valley Citizens Alliance, Ely, March 2006)

See relevant Arizona statutes under Tab B.

5. **Include a statement in the final report** urging the State Engineer to be mindful of the state policy against speculation in water rights and to prevent speculation for profit. (Val Taylor for Snake Valley Citizens Alliance, Ely, March 2006)

6. **Include a statement in the final report** requesting the State Engineer to consider taking action on subsequent applications when earlier filed applications are held in abeyance, if appropriate, given the specific circumstances of the affected applications. (Bevan Lister, Ely, March 2006)
7. **Include a statement in the final report** asking the State Engineer to consider, where appropriate, the use of new technology or updated information to determine perennial or basin yields. (Aqua Trac LLC, Elko, April 2006)

## Division of Water Resources

8. **Amend statutes** to create the Office of Water Resource Users Advocate in the State Department of Conservation and Natural Resources. This position is intended to: (a) help filter tenuous charges of injury or mismanagement related to water resources; (b) provide guidance to individuals or interests who feel injured, but may not have the sophistication to act on their concerns; and most importantly, (c) build a sense of parity among parties engaged in emerging water resource disputes. (Central Nevada Regional Water Authority and Great Basin Water Network, Las Vegas, May 2006)
9. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees for the State Engineer's budget request for additional funding for water planning activities, including funding for the position of the Chief of the Water Planning Section within the Division of Water Resources, SDCNR. See NRS 540.036. (State Engineer, Las Vegas, May 2006)
10. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees for the State Engineer's budget request for additional funding to activate the Advisory Board on Water Resources Planning and Development. See NRS 540.111. (State Engineer, Las Vegas, May 2006)
11. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees recommending funding or other support for an increase in the technical capacity of the Division of Water Resources, SDCNR, (e.g. hiring persons with degrees in hydrology or hydrogeology) to allow greater monitoring, evaluation and oversight. According to testimony, this recommendation is aimed at improving the public's confidence that impacts caused by rapid water resource development will be: (a) timely recognized by the State Engineer; and (b) addressed when impacts emerge, and before they become disruptive and costly.

(Central Nevada Regional Water Authority and Great Basin Water Network, Las Vegas, May 2006)

12. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees recommending the addition of staff in the Division of Water Resources, SDCNR, to increase the capacity of the Office of the State Engineer to conduct and maintain water resource inventories, through monitoring and identification of water sources, including without limitation, wells, large local springs, and surface waters. (Assemblyman Pete J. Goicoechea, District No. 35, Ely, March 2006)
13. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees recommending funding for additional staff in the Division of Water Resources, SDCNR, to handle the backlog of pending requests for adjudications and other hearings. (Brent Eldridge, White Pine County Commissioner, Ely, March 2006)
14. **Send a letter of support** to the Governor and the Chairmen of the Senate Finance and Assembly Ways & Means Committees recommending additional funding for the Division of Water Resources, SDCNR, to facilitate the update and creation of water resource inventories and to expedite hearings. (Bob Erickson, Fallon City Council Member, Elko, April 2006)

## Studies/Data

15. **Request an appropriation** of \$1 million to continue the Water Rights Technical Support Fund, as enacted by Senate Bill 62 (Chapter 493, *Statutes of Nevada 2005*) through the next biennium and until 2009. (Central Nevada Regional Water Authority, Ely, March 2006; Great Basin Water Network, Las Vegas, May 2006)
16. **Request an appropriation** to the Division of Water Resources for the purpose of contracting for groundwater basin studies to inventory surface, ground and domestic well water in basins where conflicts are identified and prioritized. The approximate cost is \$1.6 million per basin study or about \$3.2 to \$4.8 million annually (2-3 studies). Studies would take approximately three years to complete and include the following:
  - (a) Phase 1 comprised of geochemical studies; aerial photos of phreatophytes (vegetation which may provide evapotranspiration estimates); samplings of existing wells and springs for quantity and quality (water level measurements); precipitation information (collection of new data using USGS, PRIZM, or other calibrated models); installation of stream gages on perennial streams, estimation of non-perennial streams, and definition

of existing uses: crops, livestock needs, wildlife needs, phreatophyte needs to prevent air quality/soil erosion problems; and

- (b) Phase 2 (for priority basins) with aquifer testing (well drilling, pumping and monitoring); recharge estimates from precipitation and from irrigation; hydrogeologic mapping to determine the framework or geometry of the aquifer or saturation of alluvial fills and bedrock limits; complete inflows or chloride mass balance tests; develop a groundwater budget of input and output to reach a balance; and use all the collected data and assumptions to create a full numerical model that can be used as a management tool to test water management scenarios.

This should assist the Office of the State Engineer in meeting the requirements of NRS 532.165. (Great Basin Water Network, Las Vegas, May 2006)

17. **Direct the Legislative Counsel Bureau (LCB)** to undertake a comparative study of water resource organizational structures for several western states (Utah, Idaho and Arizona) to identify: (a) responsibilities for groundwater studies and conservation programs; (b) required water commitments for development; and (c) methods of how each state constructs the definitions of public benefits and public interests. The LCB study would be submitted to the 2009 Legislature. ALTERNATIVELY OR IN ADDITION TO SUBMITTAL TO THE LEGISLATURE, the Committee could direct that the report be submitted by January 1, 2008, to the interim committee assigned to review water resource issues. (Great Basin Water Network, Las Vegas, May 2006)
18. **Adopt a resolution** directing collaboration between the State Engineer, local governments, water districts and authorities, water purveyors, large commercial/agricultural users, other water users, and the sharing of water use data, with the goal of implementing a statewide information management system to assist in the development and management of groundwater resources. (Central Nevada Regional Water Authority, Ely, March 2006)
19. **Send a letter** to Nevada's Congressional Delegation, Desert Research Institute, the University of Nevada Reno, and University of Nevada Las Vegas, urging them to work together to obtain funding for development of a statewide research program on sustainable groundwater development, including agricultural and urban conservation, policy research, and governance structures. (Central Nevada Regional Water Authority, Ely, March 2006)

## Conservation/Planning

20. **Amend the statutes and request an appropriation** of \$1 million to create a permanent need-based fund for local water resource planning and information management. The fund would provide grants similar to the grants provided by the Water Rights Technical Support Fund (S.B. 62) but the legislation would create a framework for long-term funding and provide clear direction for program administration by the State Board of Financing Water Projects. In addition, priority would be given to rural counties and local governments outside the urban areas within Clark and Washoe Counties. The Legislature's intent to consistently fund water resource planning and information management should be explicit in the bill. (Central Nevada Regional Water Authority and Great Basin Water Network, Las Vegas, May 2006)
21. **Amend the statutes** to expand the eligible uses of the Fund for Grants for Water Conservation, Capital Improvements to Certain Water Systems and Improvements to Certain Sewage Disposal Systems to include requests for need-based funding for water resource plan implementation, e.g., infrastructure development. This fund is administered by the State Board for Financing Water Projects and is commonly referred to as the A.B. 198 program (See NRS 349.984). Although new development must always be encouraged to pay for its own infrastructure, communities that lack the financial capacity, that is, an established body of rate-payers to supply primary infrastructure necessary to properly locate development may need assistance. In addition, priority would be given to rural counties and local governments outside the urban areas within Clark and Washoe Counties. Appropriate assistance for these communities can be provided by allowing the A.B. 198 program to make need-based grants or low interest loans aimed at expanding supply and transmission capability to meet future growth needs as identified in water resource plans. (Central Nevada Regional Water Authority and Great Basin Water Network, Las Vegas, May 2006)
22. **Amend the statutes** to prohibit forfeiture of water rights due to the implementation of conservation measures, using Utah Code §73-1-4 as a model. (Water Resources Committee)
- See attached Utah statute with pertinent sections highlighted under Tab C.
23. **Amend the statutes** to allow the State Engineer to approve rotational crop management contracts that thereby permit other uses of the conserved water, including leasing of such conserved water rights. The program would be based on recent Colorado legislation.

See attached Colorado House Bill 06-1124 under Tab D. (Water Resources Committee)

24. **Amend the statutes** to require water conservation plans to include what steps will be, and have been, taken to use water more efficiently and how much water may have been saved in various water use sectors, including urban, residential, commercial, agriculture, golf courses, and public facilities, such as schools, colleges, public buildings' indoor and outdoor use, and athletic fields. (Great Basin Water Network, Las Vegas, May 2006)
25. **Amend the statutes** to require annual reports from water providers serving 600 or more customers in counties whose population is greater than 100,000. These reports would accompany the annual water quality report and be distributed to ratepayers and the appropriate local government. Reports would include: (a) locations and amounts of water supplied by source; (b) total and average use of water by user groups, e.g., single-family, multi-family, commercial, resort-hotel casino, public facilities, golf courses; (c) total water loss in the water supply system; and (d) totals for income, expenditures, and debts of the water provider, as well as anticipated costs for each project planned within the upcoming 10 years. (Great Basin Water Network, Las Vegas, May 2006)
26. **Adopt a resolution** emphasizing the importance of and encouraging water conservation and further urging water providers to demonstrate water savings and to implement conservation (tiered) pricing. (Great Basin Water Network and Snake Valley Citizens Alliance, Ely, March 2006)
27. **Adopt a resolution** encouraging rural development that matches the availability of water resources with new businesses and industry. (Humboldt River Basin Water Authority, Elko, April 2006; Val Taylor for Snake Valley Citizens Alliance, Ely, March 2006)

## Interbasin Transfers

28. **Amend the statutes** to authorize the counties to set aside up to \$2 of the fee on interbasin transfers to be used for compensating private parties impacted by water exports (See NRS 533.438). The counties shall adopt ordinances setting forth the application process and criteria to be used for dispersal of the funds and for the administration of the set-aside, including any provisions for reversion to the County. According to testimony, protection of senior water rights would be a priority of any such "reparations" set-aside. (Brent Eldridge, White Pine County Commissioner, Ely, March 2006)
29. **Amend the statutes** to clarify that only consumptive use can be transferred between water basins. (Brent Eldridge, White Pine County Commissioner, Ely, March 2006)

30. **Amend the statutes** to allow issuance of temporary permits for interbasin transfers and require data reports for three to five years as a condition of the permit. Data reports shall include water levels, recharge rates, impacts to habitat, and environmental impacts. At the end of the monitoring period the State Engineer shall hold a public hearing and determine whether to issue a final permit. (Warren Russell, Elko County Commissioner, Elko, April 2006)
31. **Adopt a resolution** directing the State Engineer to consider the following during the permitting process for interbasin or intercounty transfer projects that result in the exportation of a significant portion of the groundwater resources: (1) a comprehensive baseline inventory of historical and current water uses and related environmental factors; (2) an in-place, continuing monitoring system to ascertain impacts; (3) incorporation of the baseline inventory and monitoring into the project, along with the hydrogeology studies; (4) implementation of testing; and (5) incremental development of the project. (Dean Baker for Snake Valley Citizens Alliance, Las Vegas, May 2006)
32. **Adopt a resolution** directing the Division of Water Resources, SDCNR, to establish a baseline inventory over time, including: (a) information and data on certificated rights; (b) historical and actual uses; (c) proof of beneficial uses; and (d) itemization of acres affected by surface/subsurface flows or water tables that create meadows or pastures. Further, direct the Division to implement monitoring systems. (Connie Simkin, Caliente, February 2006)
33. **Send a letter** requesting the State Engineer to investigate new models for estimating impacts from interbasin transfers of large quantities of water. (Brent Eldridge, White Pine County Commissioner, Ely, March 2006)
34. **Include a statement in the final report** urging the Southern Nevada Water Authority and the State Engineer, in connection with an interbasin transfer, to: (1) develop a clear description of the project; (2) identify and investigate the potential environmental and socio-economic impacts of the project; (3) ensure that rural communities have adequate water for future development; (4) develop and implement a rigorous monitoring program; (5) regulate purchases from urban areas; and (6) consider conveyance of water by lease rather than transfer of ownership. (Greg James, Attorney, Las Vegas, May 2006)

## Wells/Groundwater Issues

35. **Amend the statutes** to require that the State Engineer to give notice in all basins prior to forfeiture for nonuse of water. In the absence of pumping records in certain basins, the State Engineer may base a notice of forfeiture on other evidence of nonuse. Currently, prior to forfeiture the State Engineer must give notice of four years of nonuse only in basins for which the State Engineer has pumping records, also referred to as inventoried basins. See NRS 534.090. (Assemblyman Pete J. Goicoechea, District No. 35, Las Vegas, October 2005)
36. **Amend the statutes** to set the priority date for a domestic well as the completion date of the well as stated on the well log submitted to the Division of Water Resources, SDCNR, by the well driller. (State Engineer, Las Vegas, May 2006; Central Nevada Regional Water Authority, Ely, March 2006)

See attached memorandum from State Engineer under Tab A.

37. **Amend the statutes** to address water service to auxiliary dwellings, e.g., caretaker's quarters or mother-in-law unit, from a domestic well if: (a) local ordinances allow for such uses; and (b) with the condition that a meter be installed on the well to measure usage to ensure the total water pumped does not exceed 2 acre feet. In addition, the proposed amendment would quantify the limit on domestic use as 2 acre-feet per year instead of 1,800 gallons per day (gpd). This change recognizes that more water is usually needed in the summer months than in the winter months and that the total annual use from a domestic well is what is used for planning purposes. See NRS 534.013 and 534.180. (State Engineer, Las Vegas, May 2006)

See attached memorandum from State Engineer under Tab A.

38. **Amend the statutes** to authorize the State Engineer to order any person in violation of the provisions of NRS Chapter 534 and NAC Chapter 534 to: (a) pay an administrative fine not to exceed \$10,000 per day for each violation; and (b) be liable for any expense incurred by the Division of Water Resources, SDCNR, in investigating and stopping the violation. Any appeal of a violation will be done through the courts pursuant to NRS 533.450. The details for addressing violations, assessing fines or penalties, and procedures will be done through the promulgation of rules and regulations. (State Engineer, Las Vegas, May 2006)

Note: This recommendation may be moot if the Committee approves Recommendation No. 2.

See attached memorandum from State Engineer under Tab A.

39. **Amend the statutes** to clarify that the State Engineer can order a groundwater permittee to cease pumping if monitoring shows significant impacts. (Senator Mark E. Amodei, Capital Senatorial District; Warren Russell, Elko County Commissioner, Elko, April 2006)
40. **Amend the statutes** to require a minimum dedication of water rights for parcel maps if local ordinances do not regulate domestic wells. ALTERNATIVELY, amend the statutes to require the State Engineer to initiate designation of basins in jurisdictions without local regulation of domestic wells and to require the dedication of water rights for parcel maps in designated basins. See NRS 278.462 and NRS 534.430. (Senator Mark E. Amodei, Capital Senatorial District, Elko, April 2006)
41. **Adopt a resolution** urging counties and cities concerned about the impact of domestic wells on water resources to enact local ordinances that require water rights for drilling of domestic wells on newly created parcels. Furthermore the water right dedicated for the domestic well, held by the county or city, could be transferred to a public utility when or if the parcel is served by a municipality or a water purveyor regulated by the Public Utilities Commission or the Nevada Division of Environmental Protection, SDCNR. (Steve Walker, Ely, March 2006)
42. **Send a letter** to the State Engineer urging him to consider the recommendations of the Advisory Committee for Groundwater Management in the Las Vegas Valley to bring well owners into compliance with permit terms or statutory limits on groundwater pumping through a graduated assessment structure based upon the quantity of water overpumped and the duration of non-compliance with permit or statutory limits, with an allowance for meter error. Further, for certain residential properties with allocations of less than 1,000 gpd per residence, urge the State Engineer to support the Advisory Committee's recommendation that penalties only be applied to water use over 1,000 gpd.

Note: This letter would be sent upon the passage of a bill amending the statutes to authorize the State Engineer to levy fines for overpumping. (John Hiatt, Advisory Committee for Groundwater Management, Las Vegas, May 2006)

43. **Amend the statutes** to allow the daily pumping limit of 1,800 gpd for domestic wells to be averaged over a calendar year for the purpose of determining compliance with pumping limits. (Ray Preston for Nevada Well Owners Association, Las Vegas, May 2006)

44. **Amend the statutes** to enable domestic or quasi-municipal well owners to “purchase” additional water (over the 1,800 gpd) from the local water purveyor to address overuse through an offset mechanism whereby the water purveyor would reduce its pumping by an equivalent amount. (Ray Preston for Nevada Well Owners Association, Las Vegas, May 2006)
45. **Amend the statutes** to enable domestic or quasi-municipal well owners to form a “Trading Allocation Pool (TAP)” consisting of credits from owners of wells using less than 1,800 gpd that are sold to the TAP for purchase by well owners desiring to exceed the 1,800 gpd limit. The TAP could be a non-profit organization or implemented by a willing water purveyor. (Ray Preston for Nevada Well Owners Association, Las Vegas, May 2006)
46. **Adopt a resolution** urging the State Engineer and local governments, water districts and authorities, water purveyors, and others, to work together to predict and quantify domestic well use to facilitate planning and mitigation. (Central Nevada Regional Water Authority, Ely, March 2006)
47. **Send a letter** to the Division of Water Resources, SDCNR, requesting the development of policies for mitigation for over-appropriations of groundwater and asking the Division to report its findings to the 2009 Legislature. (Central Nevada Regional Water Authority, Ely, March 2006)
48. **Include a statement in the final report** urging the State Engineer to look at impacts on subsurface irrigated lands when approving groundwater permits. (Connie Simkin, Caliente, February 2006)

<b>Miscellaneous</b>
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49. **Amend the statutes** to create an interim standing committee on water resources with a sunset date of June 30, 2015. (Water Resources Committee)
50. **Amend the Lincoln County Water District Act** (S.B. 336–2003 Session) to require election of the Water District Board so that the Lincoln County Commission would no longer function as the Water District Board. (Warren and Ruby Lister, Elko, April 2006)
51. **Adopt a proclamation** from the Committee commending Hugh Ricci for his years of state service and retirement as State Engineer. (Water Resources Committee)



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
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**MEMORANDUM**

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Date: June 2, 2006

To: Members of the Legislative Commission's Committee to Study the Use, Management and Allocation of Water Resources (S.C.R. 26, File No. 100, *Statutes of Nevada 2005*)

Through: Susan Scholley, Chief Principal Research Analyst, Research Division

From: Hugh Ricci, P.E., State Engineer

Subject: Bill Draft Proposals

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The following are three (3) bill draft suggestions for your consideration. They address the issue with mother-in-law quarters, priorities for domestic wells and request authority to fine for violations of the water law. The first two bill drafts provide specific statutory amendment language however the third bill draft simply requests authority for penalties. Our office is working on specific language for penalties based on recently adopted language in other states. We hope we will have the opportunity to provide this language to you in the very near future.

In addition to the bill draft language, two of the three drafts would have fiscal impacts to our office. These costs will not be included in our budget for '08-'09.

We look forward to working through any and all language you will be considering for bill drafts. As always, thank you for all your help during this interim-study period.

**TAB A**

## BDR – Mother-In-Law Quarters

### Issue:

There are areas in the state where there is more than one residence connected to a domestic well illegally, OR there is a desire to hook-up an additional residence to a domestic well. In areas where the State Engineer has issued an order denying any new quasi-municipal (community well) permits, a person wanting to hook-up an auxiliary dwelling to his domestic well is forced to purchase an existing water right and move it to the domestic well which can be cost prohibitive.

### Concept:

The following language are amendments to NRS 534.013 and 534.180 which provides auxiliary dwellings on a domestic well in those areas where local ordinances allow for it and with the condition that a meter be installed on the well to measure usage to ensure the total water pumped does not exceed 2 acre feet.

In addition, domestic use is quantified as 2 acre-feet per year instead of 1,800 gallons per day. This amendment will clear up the issue of allowing only 1,800 gallons of usage per day regardless of the time of year. Obviously, more water is needed in the summer months than in the winter months and ultimately, the total annual use from a domestic well is what is used for planning purposes.

### Fiscal Impact:

Yes. One additional staff engineer will be needed to review and monitor these new uses at an annual cost of approximately \$70,000 and an initial expenditure of \$25,000 to cover a vehicle, computer and office furniture.

**NRS 534.013 “Domestic use” defined.** “Domestic use” or “domestic purposes” extends to culinary and household purposes directly related to a single-family dwelling, *unless local planning agency ordinances extends such use to buildings accessory to said single family dwelling*, including, without limitation, the watering of a family garden and lawn and the watering of livestock and any other domestic animals or household pets, if the amount of water drawn does not exceed the ~~threshold daily~~ maximum amount set in [NRS 534.180](#).

### **NRS 534.180 Applicability of chapter to wells used for domestic purposes; registration and plugging of wells used for domestic purposes.**

1. Except as otherwise provided in subsection 2 and as to the furnishing of any information required by the State Engineer, this chapter does not apply in the matter of obtaining permits for the development and use of underground water from a well for domestic purposes where the draught does not exceed *two (2) acre feet per year*. ~~daily maximum of 1,800 gallons~~.
2. The State Engineer may designate any groundwater basin or portion thereof as a basin in which the registration of a well is required if the well is drilled for the development and use of underground water for domestic purposes. A driller who drills such a well shall register the information required by the State Engineer within 10 days after the completion of the well. The State Engineer shall make available forms for the registration of such wells and shall maintain a register of those wells.
3. The State Engineer may require the plugging of such a well which is drilled on or after July 1, 1981, at any time not sooner than 1 year after water can be furnished to the site by:

- (a) A political subdivision of this State; or
  - (b) A public utility whose rates and service are regulated by the Public Utilities Commission of Nevada,  
↳ but only if the charge for making the connection to the service is less than \$200.
4. *For those domestic wells supplying water to an accessory dwelling as defined by the local planning agency and pursuant to NRS 534.013, the following conditions apply:*
- a) *Any such approval by a local planning agency shall require a meter that shall measure the total amount of water use from the well and that use shall not exceed two (2) acre feet per year. The local planning agency shall inform the state engineer of the use of a domestic well in this manner on a form supplied by the state engineer. The state engineer will be responsible for monitoring water use from the well and taking any enforcement action for violations of this chapter.*
  - b) *No other manner of use will be allowed from a domestic well. The priority for any new use from a well under this section will be the date of the approval by the local planning agency. The priority date for the previous use will be the date in which the well was completed as evidenced by the well log required under NRS 534.170.*
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## **BDR - Domestic Well Priority**

### **Issue:**

The statutes are silent regarding the priority of domestic wells. The priority of permitted wells is the date that the original application is filed in the office of the State Engineer. Because domestic use does not require the filing of a water rights application, there is no coinciding priority date. The foundation of Nevada's water law is first-in-time, first-in-right, therefore it is critical to have a priority for domestic wells.

### **Concept:**

The following language is an amendment to NRS 534.080 and provides for assigning a priority to domestic wells.

### **Fiscal Impact:**

No.

**NRS 534.080 Appropriation of underground water for beneficial use from artesian or definable aquifer: Acquisition of rights under [chapter 533](#) of NRS; orders to desist; dates of priority.**

1. A legal right to appropriate underground water for beneficial use from an artesian or definable aquifer subsequent to March 22, 1913, or from percolating water, the course and boundaries of which are incapable of determination, subsequent to March 25, 1939, can only be acquired by complying with the provisions of [chapter 533](#) of NRS pertaining to the appropriation of water.

2. The State Engineer may, upon written notice sent by registered or certified mail, return receipt requested, advise the owner of a well who is using water therefrom without a permit to appropriate such water to cease using such water until he has complied with the laws pertaining to the appropriation of water. If the owner fails to initiate proceedings to secure such permit within 30 days from the date of such notice he shall be guilty of a misdemeanor.

3. **The date of priority:**

- a. of all appropriations of water from an underground source, pursuant to this section, is the date when application is made in proper form and filed in the office of the State Engineer pursuant to the provisions of chapter 533 of NRS.
- b. for domestic wells as defined under NRS 534.013, is the completion date of the well as stated on the well log submitted to the division by the responsible driller.

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## **BDR - Penalties**

### **Issue:**

The existing process for addressing violations of the water law is slow and cumbersome without any meaningful consequence or accountability for violations. Therefore, additional penalty authority is needed to ensure the proper and appropriate use of Nevada's water resources.

### **Concept:**

Provide the state engineer authority to order any person in violation of the provisions under Nevada Revised Statutes (NRS) chapters 533, 534, 535, 536 and Nevada Administrative Code (NAC) chapters 534 and 535 to:

1. Pay an administrative fine not to exceed \$10,000 per day for each violation; and
2. Be liable for any expense incurred by the Division of Water Resources in investigating and stopping the violation.

Any appeal of a violation should be done through the courts pursuant to NRS 533.450.

It is envisioned that the details for addressing violations, assessing fines or penalties, etc., would be done through the promulgation of rules and regulations. We welcome the opportunity to provide you with language we have drafted based on recently adopted codes from other states.

### **Fiscal Impact:**

Yes. Two additional staff engineers and one additional Deputy Attorney General will be needed to enforce the new regulations at an annual cost of approximately \$250,000 and an initial expenditure of \$30,000 to cover a vehicle, computer and office furniture.

## **What violations should be subject to a fines/penalties?**

The following sections within the water law provide for misdemeanors against any violators. The State Engineer is seeking penalty authority within those statutes:

### **NRS Chapter 533**

- Willful waste of water, illegal uses (533.460)
- Interference with headgates (533.465)
- Violations of any of the provisions of 533.010 to 533.475 (533.480)
- Illegal livestock watering (533.505)
- Unlawful diversion and waste of water (533.530)

### **NRS Chapter 534**

- Any person using water after a permit has been withdrawn, denied, cancelled, revoked or forfeited (534.050)
- Waste of water from an artesian well (534.070)
- Owner of a well who is using water without a permit to appropriate such water (534.080)
- Violating any of the provisions of 534.010 to 534.180 shall be guilty of a misdemeanor.

### **NRS Chapter 535**

- Any person beginning the construction of a dam before approval of plans and specs (535.010)
- Whenever any appropriator of water has the lawful right-of-way for the storage, diversion or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of his works or prevent convenient access thereto (535.090)
- Unlawful removal, damage or destruction of piling, dike, dock or lock; unlawful structures. (535.110)

### **NRS Chapter 536**

- Every person who shall willfully and maliciously remove, damage or destroy a ditch or flume lawfully erected for carrying water or draining land. (536.120)

### **NAC 535**

- A person who violates any provision of this chapter.

## **Additional areas where fines and penalties should apply:**

## NAC 534

- Well Drilling Infractions
  - Well Plugging
  - Well Construction
  - Licensing/Non-licensing issue
  - Failure to file required paperwork
  - Fraudulent paperwork

A.R.S. § 45-576



**This document has been updated. Use [KEYCITE](#).**

Arizona Revised Statutes Annotated [Currentness](#)

Title 45. Waters

[Chapter 2](#). Groundwater Code ([Refs & Annos](#))

[Article 9](#). Management ([Refs & Annos](#))

**→§ 45-576. Certificate of assured water supply; designated cities, towns and private water companies; exemptions; definition**

**A.** A person who proposes to offer subdivided lands, as defined in [§ 32- 2101](#), for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director prior to presenting the plat for approval to the city, town or county in which the land is located, where such is required, and prior to filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to [§ 32-2181](#), unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

**B.** A city, town or county may approve a subdivision plat only if the subdivider has obtained a certificate of assured water supply from the director or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section. The city, town or county shall note on the face of the approved plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

**C.** The state real estate commissioner may issue a public report authorizing the sale or lease of subdivided lands only on compliance with either of the following:

1. The subdivider, owner or agent has obtained a certificate of assured water supply from the director and has paid any activation fee required under [§ 48-3772, subsection A, paragraph 7](#), and any replenishment reserve fee required under [§ 48-3774.01, subsection A, paragraph 2](#).

2. If the subdivider has obtained a written commitment of water service for the lands from a city, town or private water company designated as having an assured water supply pursuant to this section and the subdivider, owner or agent has paid any activation fee required under [§ 48-3772, subsection A, paragraph 7](#).

**D.** The director shall designate private water companies in active management areas that have an assured water supply. If a city or town acquires a private water company that has contracted for central Arizona project water, the city or town shall assume the private water company's contract for central Arizona project water.

**E.** The director shall designate cities and towns in active management areas where an assured water supply exists. If a city or town has entered into a contract for central Arizona project water, the city or town is deemed to continue to have an assured water supply until December 31, 1997. Commencing on January 1, 1998, the determination that the city or town has an assured water supply is subject to review by the director and the director may determine that a city or town does not have an assured water supply.

**F.** The director shall notify the mayors of all cities and towns in active management areas and the chairmen of the boards of supervisors of counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation within

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thirty days of the designation or modification. If the service area of the city, town or private water company has qualified as a member service area pursuant to title 48, chapter 22, article 4, [\[FN1\]](#) the director shall also notify the conservation district of the designation or modification and shall report the projected average annual replenishment obligation for the member service area based on the projected and committed average annual demand for water within the service area during the effective term of the designation or modification subject to any limitation in an agreement between the conservation district and the city, town or private water company. For each city, town or private water company that qualified as a member service area under title 48, chapter 22 and was designated as having an assured water supply before January 1, 2004, the director shall report to the conservation district on or before January 1, 2005 the projected average annual replenishment obligation based on the projected and committed average annual demand for water within the service area during the effective term of the designation subject to any limitation in an agreement between the conservation district and the city, town or private water company. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

**G.** This section does not apply in the case of the sale of lands for developments that are subject to a mineral extraction and processing permit or an industrial use permit pursuant to [§ § 45-514](#) and [45-515](#).

**H.** The director shall adopt rules to carry out the purposes of this section no later than January 1, 1995.

**I.** For the purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to [§ 45-576.02, subsection A, paragraph 1](#), with respect to an applicant that is a member of the district, "sufficient groundwater" for the purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

(a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by [§ 9-463.01](#), [11-806.01](#) or [32-2181](#) to satisfy this requirement.

**J.** If the director designates a municipal provider as having an assured water supply under this section and the designation lapses or otherwise terminates while the municipal provider's service area is a member service area of a conservation district, the municipal provider or its successor shall continue to comply with the consistency with management goal requirements in the rules adopted by the director under subsection H of this section as if the designation was still in effect with respect to the municipal provider's designation uses. When determining compliance by the municipal provider or its successor with the consistency with management goal requirements in the rules, the director shall consider only water delivered by the municipal provider or its successor to the municipal provider's designation uses. A person is the successor of a municipal provider if the person commences water service to uses that were previously designation uses of the municipal provider. Any groundwater delivered by the

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municipal provider or its successor to the municipal provider's designation uses in excess of the amount allowed under the consistency with management goal requirements in the rules shall be considered excess groundwater for purposes of title 48, chapter 22. [\[FN2\]](#) For the purposes of this subsection, "designation uses" means all water uses served by a municipal provider on the date the municipal provider's designation of assured water supply lapses or otherwise terminates and all recorded lots within the municipal provider's service area that were not being served by the municipal provider on that date but that received final plat approval from a city, town or county on or before that date. Designation uses do not include industrial uses served by an irrigation district under [§ 45-497](#).

CREDIT(S)

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 17, eff. April 22, 1981; Laws 1982, Ch. 191, § 22, eff. April 22, 1982; Laws 1984, Ch. 103, § 8; [Laws 1989, Ch. 230, § 61](#); [Laws 1991, Ch. 112, § 5](#); [Laws 1991, Ch. 211, § 20](#); [Laws 1993, Ch. 200, § 11](#); [Laws 1994, Ch. 203, § 23, eff. April 19, 1994](#); [Laws 1994, Ch. 278, § 7](#); [Laws 1994, Ch. 291, § 21](#); [Laws 1996, Ch. 103, § 9, eff. April 9, 1996](#); [Laws 2003, Ch. 155, § 1](#); [Laws 2004, Ch. 318, § 4](#); [Laws 2005, Ch. 198, § 7](#).

[\[FN1\]](#) [Section 48-3771](#) et seq.

[\[FN2\]](#) [Section 48-3701](#) et seq.

**→§ 73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within five years--Extension of time**

(1) In order to further the state policy of securing the maximum use and benefit of its scarce water resources, a person entitled to the use of water has a continuing obligation to place all of a water right to beneficial use. The forfeiture of all or part of any right to use water for failure to place all or part of the water to beneficial use makes possible the allocation and use of water consistent with long established beneficial use concepts. The provisions of Subsections (2) through (6) shall be construed to carry out the purposes and policies set forth in this Subsection (1).

(2) As used in this section, "public water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:

(a) a municipality, water conservancy district, metropolitan water district, irrigation district created under [Section 17A-2-701.5](#), or other public agency;

(b) a water company regulated by the Public Service Commission; or

(c) any other owner of a community water system.

(3)(a) When an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of five years, the water right or the unused portion of that water right ceases and the water reverts to the public, unless, before the expiration of the five-year period, the appropriator or the appropriator's successor in interest files a verified nonuse application with the state engineer.

(b)(i) A nonuse application may be filed on all or a portion of the water right, including water rights held by mutual irrigation companies.

(ii) Public water supply entities that own stock in a mutual water company, after giving written notice to the water company, may file nonuse applications with the state engineer on the water represented by the stock.

(c)(i) A water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least five years.

(ii) If **forfeiture** is asserted in an action for general determination of **rights** in conformance with the provisions of Chapter 4, Determination of **Water Rights**, the 15-year limitation period shall commence to run back in time from the date the state engineer's proposed determination of **rights** is served upon each claimant.

(iii) A decree entered in an action for general determination of **rights** under Chapter 4, Determination of **Water Rights**, shall bar any claim of **forfeiture** for prior nonuse against any right determined to be valid in the decree, but shall not bar a claim for periods of nonuse that occur after the entry of the decree.

(iv) A proposed determination by the state engineer in an action for general determination of **rights** under Chapter 4, Determination of **Water Rights**, shall bar any claim of **forfeiture** for prior nonuse against any right proposed to be valid, unless a timely objection has been filed within the time allowed in Chapter 4, Determination of **Water Rights**.

(d) The extension of time to resume the use of that water may not exceed five years unless the time is further extended by the state engineer.

(e) The provisions of this section are applicable whether the unused or abandoned water or a portion of the water is permitted to run to waste or is used by others without right with the knowledge of the water right holder, provided that the use of water pursuant to a lease or other agreement with the appropriator or the appropriator's successor shall be considered to constitute beneficial use.

(f) The provisions of this section shall not apply:

(i) to those periods of time when a surface water source fails to yield sufficient water to satisfy the water right, or when groundwater is not available because of a sustained drought;

(ii) to water stored in reservoirs pursuant to an existing water right, where the stored water is being held in storage for present or future use; or

(iii) when a water user has beneficially used substantially all of a water right within a five-year period, provided that this exemption shall not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights.

(g) Groundwater rights used to supplement the quantity or quality of other water supplies may not be subject to loss or reduction under this section if not used during periods when the other water source delivers sufficient water so as to not require use of the supplemental groundwater.

(4)(a) The state engineer shall furnish an application requiring the following information:

(i) the name and address of the applicant;

(ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;

(iii) the date the water was last diverted and placed to beneficial use;

(iv) the quantity of water;

(v) the period of use;

(vi) the extension of time applied for;

(vii) a statement of the reason for the nonuse of the water; and

(viii) any other information that the state engineer requires.

(b) Filing the application extends the time during which nonuse may continue until the state engineer issues his order on the nonuse application.

(c)(i) Upon receipt of the application, the state engineer shall publish a notice of the application once a week for two successive weeks in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used.

(ii) The notice shall:

(A) state that an application has been made; and

(B) specify where the interested party may obtain additional information relating to the application.

(d) Any interested person may file a written protest with the state engineer against the granting of the application:

(i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and

(ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.

(e) In any proceedings to determine whether the application for extension should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(f) After further investigation, the state engineer may approve or reject the application.

(5)(a) Nonuse applications on all or a portion of a water right shall be granted by the state engineer for periods not exceeding five years each, upon a showing of reasonable cause for nonuse.

(b) Reasonable causes for nonuse include:

(i) demonstrable financial hardship or economic depression;

(ii) the initiation of recognized water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;

(iii) operation of legal proceedings;

(iv) the holding of a water right or stock in a mutual water company without use by any public water supply entity to meet the reasonable future requirements of the public;

(v) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan;

(vi) situations where all or part of the land on which water is used is contracted under an approved state agreement or federal conservation following program;

(vii) the loss of capacity caused by deterioration of the water supply or delivery equipment if the applicant submits, with the application, a specific plan to resume full use of the water right by replacing, restoring, or improving the equipment; or

(viii) any other reasonable cause.

(6)(a) Sixty days before the expiration of any extension of time, the state engineer shall notify the applicant by registered mail or by any form of electronic communication through which receipt is verifiable, of the date when the extension period will expire.

(b) Before the date of expiration, the applicant shall either:

(i) file a verified statement with the state engineer setting forth the date on which use of the water was resumed, and whatever additional information is required by the state engineer; or

(ii) apply for a further extension of time in which to resume use of the water according to the procedures and requirements of this section.

(c) Upon receipt of the applicant's properly completed, verified statement, the state engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if so, shall issue a certificate of resumption of use of the water as evidenced by the resumed beneficial use.

(7) The appropriator's water right or a portion of the water right ceases and the water reverts to the public if the:

(a) appropriator or the appropriator's successor in interest fails to apply for an extension of time;

(b) state engineer denies the nonuse application; or

(c) appropriator or the appropriator's successor in interest fails to apply for a further extension of time.

**NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

HOUSE BILL 06-1124

BY REPRESENTATIVE(S) Hodge, Berens, Borodkin, Coleman, Crane, Curry, Frangas, Gallegos, Garcia, Harvey, Hoppe, Jahn, Kerr J., King, May M., Paccione, Rose, Schultheis, Solano, Stafford, Sullivan, and Weissmann;

also SENATOR(S) Owen, Grossman, McElhany, and Wiens.

CONCERNING THE ADJUDICATION OF A ROTATIONAL CROP MANAGEMENT CONTRACT, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 37-92-103 (10.6) and (10.7), Colorado Revised Statutes, are amended, and the said 37-92-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**37-92-103. Definitions.** As used in this article, unless the context otherwise requires:

(10.6) "~~Significant water development activity~~" means any removal of water that results in the transfer of more than one thousand acre-feet of consumptive use of water per year by a single applicant or an applicant's agents "ROTATIONAL CROP MANAGEMENT CONTRACT" MEANS A WRITTEN

**TAB D**

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

CONTRACT IN WHICH THE OWNER OR GROUPS OF OWNERS OF IRRIGATION WATER RIGHTS AGREE TO IMPLEMENT A CHANGE OF THE RIGHTS TO A NEW USE BY FOREGOING IRRIGATION OF A PORTION OF THE LANDS HISTORICALLY IRRIGATED AND THAT PROVIDES THAT THE WATER RIGHTS OWNER OR GROUPS OF OWNERS MAY ROTATE THE LANDS THAT WILL NOT BE IRRIGATED AS LONG AS THERE IS NO INJURIOUS EFFECT AS SPECIFIED IN SECTION 37-92-305 (3). THE CONTRACT SHALL ALSO PROVIDE THAT IN THE CHANGE OF WATER RIGHT PROCEEDING THE WATER RIGHTS OWNER OR GROUPS OF OWNERS SHALL SEEK WATER COURT APPROVAL TO ROTATE THE LANDS THAT WILL NOT BE IRRIGATED AS LONG AS THERE IS NO INJURIOUS EFFECT AS SPECIFIED IN SECTION 37-92-305 (3).

(10.7) ~~"Storage" or "store" means the impoundment, possession, and control of water by means of a dam. Waters in underground aquifers are not in storage or stored except to the extent waters in such aquifers are placed there by other than natural means with water to which the person placing such water in the underground aquifer has a conditional or decreed right~~ "SIGNIFICANT WATER DEVELOPMENT ACTIVITY" MEANS ANY REMOVAL OF WATER THAT RESULTS IN THE TRANSFER OF MORE THAN ONE THOUSAND ACRE-FEET OF CONSUMPTIVE USE OF WATER PER YEAR BY A SINGLE APPLICANT OR AN APPLICANT'S AGENTS.

(10.8) "STORAGE" OR "STORE" MEANS THE IMPOUNDMENT, POSSESSION, AND CONTROL OF WATER BY MEANS OF A DAM. WATERS IN UNDERGROUND AQUIFERS ARE NOT IN STORAGE OR STORED EXCEPT TO THE EXTENT WATERS IN SUCH AQUIFERS ARE PLACED THERE BY OTHER THAN NATURAL MEANS WITH WATER TO WHICH THE PERSON PLACING SUCH WATER IN THE UNDERGROUND AQUIFER HAS A CONDITIONAL OR DECREED RIGHT.

**SECTION 2.** 37-92-304 (6), Colorado Revised Statutes, is amended to read:

**37-92-304. Proceedings by the water judge.** (6) Any decision of the water judge as specified in subsection (5) of this section dealing with a change of water right, IMPLEMENTATION OF A ROTATIONAL CROP MANAGEMENT CONTRACT, or a plan for augmentation shall include the condition that the approval of such change, CONTRACT, or plan shall be subject to reconsideration by the water judge on the question of injury to the vested rights of others for such period after the entry of such decision as is necessary or desirable to preclude or remedy any such injury. Such

condition setting forth the period allowed for reconsideration shall be determined by the water judge after making specific findings and conclusions including, when applicable, the ~~historic~~ HISTORICAL use to which the water rights involved were put, if any, and the proposed future use of the water rights involved. The water judge shall specify ~~his determination as to~~ such period in ~~his~~ THE decision, but the period may be extended upon further decision by the water judge that the nonoccurrence of injury shall not have been conclusively established. Any decision may contain any other provision ~~which~~ THAT the water judge deems proper in determining the rights and interests of the persons involved. All decisions of the water judge, including decisions as to the period of reconsideration and extension thereof, shall become a judgment and decree as specified in this article and be appealable upon entry, notwithstanding conditions subjecting the decisions to reconsideration on the question of injury to the vested rights of others as provided in this subsection (6).

**SECTION 3.** 37-92-305 (3) and (4), Colorado Revised Statutes, are amended, and the said 37-92-305 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**37-92-305. Standards with respect to rulings of the referee and decisions of the water judge.** (3) A change of water right, IMPLEMENTATION OF A ROTATIONAL CROP MANAGEMENT CONTRACT, or plan for augmentation, including water exchange project, shall be approved if such change, CONTRACT, or plan will not injuriously affect the owner of or persons entitled to use water under a vested water right or a decreed conditional water right. In cases in which a statement of opposition has been filed, the applicant shall provide to the referee or to the water judge, as the case may be, a proposed ruling or decree to prevent such injurious effect in advance of any hearing on the merits of the application, and notice of such proposed ruling or decree shall be provided to all parties who have entered the proceedings. If it is determined that the proposed change, CONTRACT, or plan as presented in the application and the proposed ruling or decree would cause such injurious effect, the referee or the water judge, as the case may be, shall afford the applicant or any person opposed to the application an opportunity to propose terms or conditions ~~which~~ THAT would prevent such injurious effect.

(4) (a) Terms and conditions to prevent injury as specified in subsection (3) of this section may include:

(a) (I) A limitation on the use of the water ~~which~~ THAT is subject to the change, taking into consideration the ~~historic~~ HISTORICAL use and the flexibility required by annual climatic differences;

(b) (II) The relinquishment of part of the decree for which the change is sought or the relinquishment of other decrees owned by the applicant ~~which~~ THAT are used by the applicant in conjunction with the decree for which the change has been requested, if necessary to prevent an enlargement upon the ~~historic~~ HISTORICAL use or diminution of return flow to the detriment of other appropriators;

(c) (III) A time limitation on the diversion of water for which the change is sought in terms of months per year;

(IV) IF THE APPLICATION IS FOR THE IMPLEMENTATION OF A ROTATIONAL CROP MANAGEMENT CONTRACT, SEPARATE ANNUAL HISTORICAL CONSUMPTIVE USE LIMITS FOR THE PARCELS TO BE ROTATED ACCORDING TO THE HISTORICAL CONSUMPTIVE USE OF SUCH LANDS. TO THE EXTENT THAT SOME OR ALL OF THE WATER THAT IS THE SUBJECT OF THE CONTRACT IS NOT UTILIZED AT A NEW PLACE OF USE IN A GIVEN YEAR, SUCH WATER MAY BE UTILIZED ON THE ORIGINALLY IRRIGATED LANDS IF SO PROVIDED IN THE DECREE AND CONTRACT AND IF THE ELECTION TO IRRIGATE IS MADE PRIOR TO THE BEGINNING OF THE IRRIGATION SEASON AND APPLIES TO THE ENTIRE IRRIGATION SEASON. A FAILURE OF A PARTY TO A ROTATIONAL CROP MANAGEMENT CONTRACT WHO IS NOT THE OWNER OF THE IRRIGATION WATER RIGHTS THAT ARE SUBJECT TO THE CONTRACT TO PUT TO BENEFICIAL USE THE FULL AMOUNT OF WATER THAT WAS DECREED PURSUANT TO THE APPLICATION FOR APPROVAL OF THE CONTRACT SHALL NOT BE DEEMED TO REDUCE THE AMOUNT OF HISTORICAL CONSUMPTIVE USE THAT THE OWNER OF THE WATER RIGHTS HAS MADE OF THE RIGHTS.

(d) (V) Such other conditions as may be necessary to protect the vested rights of others.

(b) IF THE WATER JUDGE APPROVES THE IMPLEMENTATION OF A ROTATIONAL CROP MANAGEMENT CONTRACT, THE ROTATIONAL CROP MANAGEMENT CONTRACT SHALL BE RECORDED WITH THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE HISTORICALLY IRRIGATED LANDS ARE LOCATED, AND THE WATER JUDGE SHALL MAKE AFFIRMATIVE FINDINGS THAT THE IMPLEMENTATION OF THE ROTATIONAL CROP MANAGEMENT

CONTRACT:

(I) IS CAPABLE OF ADMINISTRATION BY THE STATE AND DIVISION ENGINEERS. IN ORDER TO SATISFY THE REQUIREMENT OF THIS SUBPARAGRAPH (I), THE WATER JUDGE MAY REQUIRE THE APPLICANT TO PROVIDE SIGNAGE AND MAPPING OF THE LANDS NOT IRRIGATED ON AN ANNUAL BASIS.

(II) WILL NEITHER EXPAND THE HISTORICAL USE OF THE ORIGINAL WATER RIGHTS NOR CHANGE THE RETURN FLOW PATTERN FROM THE HISTORICALLY IRRIGATED LAND IN A MANNER THAT WILL RESULT IN AN INJURIOUS EFFECT AS SPECIFIED IN SUBSECTION (3) OF THIS SECTION; AND

(III) WILL COMPLY WITH PARAGRAPH (a) OF SUBSECTION (4.5) OF THIS SECTION WITH REGARD TO POTENTIAL SOIL EROSION, REVEGETATION, AND WEED MANAGEMENT.

(17) (a) APPLICANTS FOR APPROVAL OF A ROTATIONAL CROP MANAGEMENT CONTRACT SHALL PAY THE STATE ENGINEER THE FOLLOWING FEES:

(I) AN APPLICATION FEE OF ONE THOUSAND SEVEN HUNDRED THIRTY-FOUR DOLLARS;

(II) A FEE OF SIX HUNDRED SEVENTEEN DOLLARS THAT IS DUE ANNUALLY BEGINNING ONE YEAR AFTER SUBMITTAL OF THE APPLICATION UNTIL THE APPLICATION HAS BEEN DECREED BY THE WATER JUDGE PURSUANT TO SECTION 37-92-308 (4); AND

(III) AN ANNUAL FEE OF THREE HUNDRED DOLLARS PER YEAR AFTER THE APPLICATION HAS BEEN DECREED.

(b) THE FEES SHALL BE USED BY THE STATE ENGINEER FOR THE REVIEW OF THE ENGINEERING REPORTS, FIELD INSPECTIONS, AND THE ADMINISTRATION OF THE ROTATIONAL CROP MANAGEMENT CONTRACT. THE STATE ENGINEER SHALL TRANSMIT SUCH FEES TO THE STATE TREASURER, WHO SHALL DEPOSIT THEM IN THE DIVISION OF WATER RESOURCES GROUND WATER MANAGEMENT CASH FUND CREATED IN SECTION 37-80-111.5.

**SECTION 4.** The introductory portion to 37-92-308 (4) (a),

Colorado Revised Statutes, is amended to read:

**37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund - legislative declaration.**

(4) (a) Beginning January 1, 2002, if an application for approval of a plan for augmentation, ROTATIONAL CROP MANAGEMENT CONTRACT, or change of water right has been filed with a water court and the court has not issued a decree, the state engineer may approve the temporary operation of such plan, CONTRACT, or change of water right as a substitute water supply plan if the following conditions are met:

**SECTION 5.** 37-80-111.5 (1) (d), Colorado Revised Statutes, is amended to read:

**37-80-111.5. Fees - water data bank cash fund - division of water resources publication cash fund - satellite monitoring system cash fund - ground water management cash fund - well inspection cash fund - created.**

(1) (d) The state engineer shall collect fees pursuant to sections 37-90-105 (3) (a), (3) (e), and (4), 37-90-107 (7) (c) (I) and (7) (d) (I), 37-90-108 (4) and (6), 37-90-116 (1) (a), (1) (c), (1) (h), and (1) (i), 37-90-137 (2), (3) (a), and (3) (c), ~~37-90.5-106~~ 37-90.5-106, 37-92-305 (17), 37-92-308, AND 37-92-602 (3) (a), (3) (d), and (5). ~~and 37-92-308.~~ All such fees shall be transmitted to the state treasurer, who shall credit the same to the division of water resources ground water management cash fund, which is hereby created; except that, of each fee collected pursuant to section 37-90-107 (7) (c) (I) and (7) (d) (I) and section 37-90-116 (1) (a), (1) (h), and (1) (i), thirty dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-137 (2), (3) (a) (I), and (3) (a) (II) and section 37-92-602 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (b), twenty-five dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-116 (1) (c), ten dollars shall be credited to the general fund; of each fee collected pursuant to section 37-90-105 (3) (a) and (4) (a) and section 37-92-602 (3) (a) for wells applied for pursuant to section 37-92-602 (3) (c) and (5), five dollars shall be credited to the general fund; and except that, of each fee collected pursuant to sections 37-90-105 (3) (a) (I) and (4) (a), 37-90-107 (7) (d) (I), 37-90-116 (1) (a), (1) (c), and (1) (h), 37-90-137 (2) (a), and 37-92-602 (3) (a) and (5), forty dollars shall be credited to the well inspection cash fund, which fund is hereby created. Moneys in the well inspection cash fund shall be appropriated to and expended by the state engineer for the purposes

established in section 37-91-113. Any moneys credited to the well inspection cash fund and unexpended at the end of any given fiscal year shall remain in the fund and shall not revert to the general fund. All interest derived from the deposit and investment of this fund shall remain in the fund and shall not revert to the general fund. Moneys in the ground water management cash fund shall be expended by the state engineer for the purposes of developing an automated well permit processing system that will expedite the issuance of well permits, creating and maintaining a ground water information management system, establishing a ground water data network, establishing ground water recharge programs, conducting ground water investigations, THE ADMINISTRATION OF ROTATIONAL CROP MANAGEMENT CONTRACTS, and for other ground water related activities that are deemed necessary by the state engineer in performing statutory duties, subject to appropriation by the general assembly. Data in the ground water data network shall be made available to the public by the office of the state engineer as expeditiously as possible.

**SECTION 6. Appropriation.** In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of water resources ground water management cash fund created in section 37-80-111.5 (1) (d), Colorado Revised Statutes, not otherwise appropriated, to the department of natural resources, division of water resources, for the fiscal year beginning July 1, 2006, the sum of thirteen thousand one hundred fifty-seven dollars (\$13,157) and 0.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

**SECTION 7. Applicability.** This act shall apply to applications for water right decrees filed on or after the effective date of this act.

**SECTION 8. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Andrew Romanoff  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Joan Fitz-Gerald  
PRESIDENT OF  
THE SENATE

---

Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

---

Karen Goldman  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

---

Bill Owens  
GOVERNOR OF THE STATE OF COLORADO