

ASSEMBLY BILL NO. 73—COMMITTEE  
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE DIVISION OF WATER RESOURCES)

DECEMBER 15, 2010

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the appropriation of water for a beneficial use. (BDR 48-467)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to water; authorizing the State Engineer or any assistant or authorized agent of the State Engineer to enter certain land to investigate and carry out the duties of the State Engineer; revising provisions relating to the forfeiture of certain water rights; removing provisions requiring the State Engineer to adopt regulations establishing a program to allow a public water system to receive a credit for adding a new customer to the system; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Under existing law, if an owner or proprietor appropriates underground water  
2 through the use of a well, the State Engineer or any assistant or authorized agent of  
3 the State Engineer is authorized to enter the premises of the owner or proprietor  
4 where such a well is situated to investigate and carry out the duties of the State  
5 Engineer in the administration of the provisions of chapter 534 of NRS governing  
6 underground water and wells. (NRS 534.130) However, existing law does not  
7 confer similar authority upon the State Engineer or any assistant or authorized  
8 agent of the State Engineer to enter the land of an owner or proprietor for the  
9 purpose of carrying out the provisions of chapter 533 of NRS governing vested  
10 water rights and rights to appropriate public water for a beneficial use. **Section 1** of  
11 this bill specifically confers such authority upon the State Engineer or any assistant  
12 or authorized agent of the State Engineer for the purpose of carrying out the  
13 provisions of chapter 533 of NRS.

14 Under existing law, the State Engineer is authorized to inspect at any time the  
15 construction of a dam for which he or she has issued a permit to appropriate, store  
16 and use the water to be impounded or diverted by the dam. (NRS 535.010) Existing



\* A B 7 3 R 1 \*

17 law also requires the State Engineer to make inspections of dams from time to time.  
18 (NRS 535.030) In addition to any such authorized or required inspections, and  
19 similarly to the authority conferred in **section 1, section 5** of this bill specifically  
20 confers authority upon the State Engineer or any assistant or authorized agent of the  
21 State Engineer to enter the land of any owner or proprietor where any dam or other  
22 obstruction is situated to investigate and carry out the duties of the State Engineer  
23 pursuant to chapter 535 of NRS.

24 Existing law provides for the forfeiture of a right to use beneficially all or any  
25 part of underground water for the purpose for which the underground water is  
26 acquired or claimed. Existing law also authorizes the State Engineer to extend the  
27 amount of time required to work the forfeiture. (NRS 534.090) **Section 3** of this bill  
28 clarifies that groundwater rights for which a certificate of beneficial use has been  
29 issued, instead of groundwater rights held under a permit, are subject to the  
30 forfeiture procedure. Permitted rights are lost through the process of cancellation.  
31 (NRS 533.395) In addition, **section 3** requires the State Engineer to declare a water  
32 right forfeited for nonuse if the State Engineer grants an extension of time to the  
33 owner of the water right and, before the expiration of that extension of time, proof  
34 of resumption of beneficial use or another request for an extension of time is not  
35 filed in the Office of the State Engineer.

36 Existing law requires the State Engineer to adopt regulations establishing a  
37 program that allows a public water system to receive a credit for adding a new  
38 customer to the public water system in any area that the State Engineer has  
39 designated as a groundwater basin and in which the State Engineer has denied one  
40 or more applications for a municipal use of groundwater. Before adopting those  
41 regulations, existing law requires the State Engineer to hold a public hearing within  
42 the basin to which the regulations will apply or within the county in which a major  
43 portion of the groundwater basin lies. (NRS 534.350) **Section 4** of this bill deletes  
44 the requirement for the State Engineer to adopt those regulations and to hold a  
45 public hearing before adopting the regulations.

---

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

1 **Section 1.** Chapter 533 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3 *The State Engineer or any assistant or authorized agent of the*  
4 *State Engineer may enter the land of any owner or proprietor*  
5 *where any water is being diverted or used pursuant to this chapter*  
6 *at any reasonable hour of the day to investigate and carry out the*  
7 *duties of the State Engineer pursuant to this chapter.*

8 **Sec. 2.** (Deleted by amendment.)

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

10 534.090 1. Except as otherwise provided in this section,  
11 failure for 5 successive years after April 15, 1967, on the part of the  
12 holder of any right, whether it is an adjudicated right, an  
13 unadjudicated right or a ~~[permitted]~~ right ~~[.]~~ *for which a certificate*  
14 *has been issued pursuant to NRS 533.425*, and further whether the  
15 right is initiated after or before March 25, 1939, to use beneficially  
16 all or any part of the underground water for the purpose for which



1 the right is acquired or claimed, works a forfeiture of both  
2 undetermined rights and determined rights to the use of that water to  
3 the extent of the nonuse. If the records of the State Engineer or any  
4 other documents specified by the State Engineer indicate at least 4  
5 consecutive years, but less than 5 consecutive years, of nonuse of all  
6 or any part of a water right which is governed by this chapter, the  
7 State Engineer shall notify the owner of the water right, as  
8 determined in the records of the Office of the State Engineer, by  
9 registered or certified mail that the owner has 1 year after the date of  
10 the notice in which to use the water right beneficially and to provide  
11 proof of such use to the State Engineer or apply for relief pursuant  
12 to subsection 2 to avoid forfeiting the water right. If, after 1 year  
13 after the date of the notice, proof of *resumption of* beneficial use is  
14 not ~~sent to~~ *filed in* the *Office of the* State Engineer, the State  
15 Engineer shall, unless the State Engineer has granted a request to  
16 extend the time necessary to work a forfeiture of the water right,  
17 declare the right forfeited within 30 days. Upon the forfeiture of a  
18 right to the use of groundwater, the water reverts to the public and is  
19 available for further appropriation, subject to existing rights. If,  
20 upon notice by registered or certified mail to the owner of record  
21 whose right has been declared forfeited, the owner of record fails to  
22 appeal the ruling in the manner provided for in NRS 533.450, and  
23 within the time provided for therein, the forfeiture becomes final.  
24 The failure to receive a notice pursuant to this subsection does not  
25 nullify the forfeiture or extend the time necessary to work the  
26 forfeiture of a water right.

27 2. The State Engineer may, upon the request of the holder of  
28 any right described in subsection 1, extend the time necessary to  
29 work a forfeiture under that subsection if the request is made before  
30 the expiration of the time necessary to work a forfeiture. The State  
31 Engineer may grant, upon request and for good cause shown, any  
32 number of extensions, but a single extension must not exceed 1 year.  
33 In determining whether to grant or deny a request, the State  
34 Engineer shall, among other reasons, consider:

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

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

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

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



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

3 ➔ The State Engineer shall notify, by registered or certified mail,  
4 the owner of the water right, as determined in the records of the  
5 Office of the State Engineer, of whether the State Engineer has  
6 granted or denied the holder's request for an extension pursuant to  
7 this subsection. *If the State Engineer grants an extension pursuant*  
8 *to this subsection and, before the expiration of that extension,*  
9 *proof of resumption of beneficial use or another request for an*  
10 *extension is not filed in the Office of the State Engineer, the State*  
11 *Engineer shall declare the water right forfeited within 30 days*  
12 *after the expiration of the extension granted pursuant to this*  
13 *subsection.*

14 3. If the failure to use the water pursuant to subsection 1 is  
15 because of the use of center-pivot irrigation before July 1, 1983, and  
16 such use could result in a forfeiture of a portion of a right, the State  
17 Engineer shall, by registered or certified mail, send to the owner of  
18 record a notice of intent to declare a forfeiture. The notice must  
19 provide that the owner has at least 1 year after the date of the notice  
20 to use the water beneficially or apply for additional relief pursuant  
21 to subsection 2 before forfeiture of the owner's right is declared by  
22 the State Engineer.

23 4. A right to use underground water whether it is vested or  
24 otherwise may be lost by abandonment. If the State Engineer, in  
25 investigating a groundwater source, upon which there has been a  
26 prior right, for the purpose of acting upon an application to  
27 appropriate water from the same source, is of the belief from his or  
28 her examination that an abandonment has taken place, the State  
29 Engineer shall so state in the ruling approving the application. If,  
30 upon notice by registered or certified mail to the owner of record  
31 who had the prior right, the owner of record of the prior right fails to  
32 appeal the ruling in the manner provided for in NRS 533.450, and  
33 within the time provided for therein, the alleged abandonment  
34 declaration as set forth by the State Engineer becomes final.

35 **Sec. 4.** NRS 534.350 is hereby amended to read as follows:

36 534.350 1. ~~[The State Engineer shall adopt regulations~~  
37 ~~establishing a program that allows a]~~ A public water system ~~[to]~~  
38 *may* receive credits, as provided in this section, for the addition of  
39 new customers to the system. The ~~[program]~~ *granting of a credit*  
40 *pursuant to this section* must be limited to public water systems in  
41 areas:

42 (a) Designated as groundwater basins by the State Engineer  
43 pursuant to the provisions of NRS 534.030; and

44 (b) ~~[In which the State Engineer has denied one or more~~  
45 ~~applications for any municipal uses of groundwater.]~~ *For which the*



1 *State Engineer has issued an order for granting a credit pursuant*  
2 *to this section.*

3 2. ~~Before the State Engineer adopts any regulations pursuant~~  
4 ~~to this section regarding any particular groundwater basin, the State~~  
5 ~~Engineer shall hold a public hearing:~~

6 ~~—(a) Within the basin to which the regulations will apply if~~  
7 ~~adequate facilities to hold a hearing are available within that basin;~~  
8 ~~or~~

9 ~~—(b) In all other cases, within the county where the major portion~~  
10 ~~of that basin lies;~~

11 ~~to take testimony from any interested persons regarding the~~  
12 ~~proposed regulations.~~

13 ~~3. Upon adoption of the regulations required by this section~~  
14 ~~regarding a particular groundwater basin, a] A public water system~~  
15 which provides service in ~~[that] a groundwater~~ basin is entitled to  
16 receive a credit for each customer who is added to the system ~~[after~~  
17 ~~the adoption of those regulations]~~ and:

18 (a) Voluntarily ceases to draw water from a domestic well  
19 located within that basin; or

20 (b) Is the owner of a lot or other parcel of land, other than land  
21 used or intended solely for use as a location for a domestic well,  
22 which:

23 (1) Is located within that basin;

24 (2) Was established as a separate lot or parcel before July 1,  
25 1993;

26 (3) Was approved by a local governing body or planning  
27 commission for service by an individual domestic well before  
28 July 1, 1993; and

29 (4) Is subject to a written agreement which was voluntarily  
30 entered into by the owner with the public water system pursuant to  
31 which the owner agrees not to drill a domestic well on the land and  
32 the public water system agrees that it will provide water service to  
33 the land. Any such agreement must be acknowledged and recorded  
34 in the same manner as conveyances affecting real property are  
35 required to be acknowledged and recorded pursuant to chapter 111  
36 of NRS.

37 ~~[4.]~~ 3. If a county requires, by ordinance, the dedication to the  
38 county of a right to appropriate water from a domestic well which is  
39 located on a lot or other parcel of land that was established as a  
40 separate lot or parcel on or after July 1, 1993, the county may, by  
41 relinquishment to the State Engineer, allow the right to appropriate  
42 water to revert to the source of the water. The State Engineer shall  
43 not accept a relinquishment of a right to appropriate water pursuant  
44 to this subsection unless the right is in good standing as determined



1 by the State Engineer. A right to appropriate water that is dedicated  
2 and relinquished pursuant to this subsection:

3 (a) Remains appurtenant only to the parcel of land in which it is  
4 located as specified on the parcel map; and

5 (b) Maintains its date of priority established pursuant to  
6 NRS 534.080.

7 ~~[5-]~~ 4. If an owner of a parcel of land specified in subsection  
8 ~~[4]~~ 3 becomes a new customer of a public water system for that  
9 parcel of land, the public water system is entitled to receive a credit  
10 in the same manner as the addition of any other customer to the  
11 public water system pursuant to this section.

12 ~~[6-]~~ 5. The State Engineer may require a new customer, who  
13 voluntarily ceases to draw water from a domestic well as provided  
14 in paragraph (a) of subsection ~~[3]~~ 2 or whose right to appropriate  
15 water is dedicated pursuant to subsection ~~[4-]~~ 3, to plug that well.

16 ~~[7-]~~ 6. A credit granted pursuant to this section:

17 (a) Must be sufficient to enable the public water system to add  
18 one service connection for a single-family dwelling to the system,  
19 except that the credit may not exceed the increase in water  
20 consumption attributable to the additional service connection or  
21 2 acre-feet per year, whichever is less.

22 (b) May not be converted to an appropriate water right.

23 ~~[8-]~~ 7. This section does not:

24 (a) Require a public water system to extend its service area.

25 (b) Authorize any increase in the total amount of groundwater  
26 pumped in a groundwater basin.

27 (c) Affect any rights of an owner of a domestic well who does  
28 not voluntarily comply with the provisions of this section.

29 ~~[9-]~~ 8. As used in this section:

30 (a) "Domestic well" means a well used for culinary and  
31 household purposes in:

32 (1) A single-family dwelling; and

33 (2) An accessory dwelling unit for a single-family dwelling if  
34 provided for in an applicable local ordinance,

35 including the watering of a garden, lawn and domestic animals  
36 and where the draught does not exceed 2 acre-feet per year.

37 (b) "Public water system" has the meaning ascribed to it in  
38 NRS 445A.840.

39 **Sec. 5.** Chapter 535 of NRS is hereby amended by adding  
40 thereto a new section to read as follows:

41 *In addition to any inspection conducted pursuant to NRS*  
42 *535.010 or 535.030, the State Engineer or any assistant or*  
43 *authorized agent of the State Engineer may enter the land of any*  
44 *owner or proprietor where any dam or other obstruction is situated*



1 *at any reasonable hour of the day to investigate and carry out the*  
2 *duties of the State Engineer pursuant to this chapter.*

3 **Sec. 6.** The Legislature hereby declares that:

4 1. It has examined the past and present practice of the State  
5 Engineer with respect to the forfeiture of water rights on and after  
6 March 15, 1947, and finds that the State Engineer has applied the  
7 provisions of Nevada law relating to the forfeiture of water rights in  
8 a manner consistent with the provisions of subsection 1 of NRS  
9 534.090, as amended by section 3 of this act.

10 2. The amendatory provisions of subsection 1 of section 3 of  
11 this act are intended to clarify rather than change the existing  
12 application of NRS 534.090 relating to the forfeiture of water rights  
13 and to promote thereby stability and consistency in the  
14 administration of chapters 533 and 534 of NRS.

15 **Sec. 7.** This act becomes effective upon passage and approval.

⑩



\* A B 7 3 R 1 \*