

SENATE BILL NO. 134—SENATORS GOICOECHEA; AND FORD

PREFILED FEBRUARY 13, 2017

Referred to Committee on Natural Resources

SUMMARY—Revises provisions concerning water. (BDR 48-787)

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

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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; authorizing the State Engineer to determine if a conflict between applicants for certain permits and existing holders of water rights and owners of domestic wells can be eliminated; authorizing the State Engineer to require an applicant for a permit to submit a monitoring, management and mitigation plan; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires the State Engineer to reject an application for a permit to
2 appropriate water to beneficial use if there is no unappropriated water at the source
3 of supply or if the proposed use of the water or change conflicts with existing rights
4 or protectable interests in existing domestic wells or threatens to prove detrimental
5 to the public interest. (NRS 533.370) **Section 1** of this bill provides that if a
6 proposed use or change conflicts with existing rights or protectable interests in
7 domestic wells, before rejecting the application, the State Engineer may determine
8 if the conflict can be eliminated. **Section 1** requires the State Engineer to: (1)
9 inform the applicant and every holder of existing rights and owner of a domestic
10 well with whom the application conflicts; (2) request that the applicant and such
11 holders of existing rights and owners of domestic wells work together to reach an
12 agreement as to whether the conflict can be eliminated; and (3) consider any
13 agreement at a public hearing. Finally, **section 1** authorizes the State Engineer to
14 approve the application for a permit on the condition that before the water is
15 appropriated for beneficial use: (1) any measure or action agreed to by the parties is
16 taken; and (2) the conflict must be eliminated.

17 **Section 2** of this bill authorizes the State Engineer to require a monitoring,
18 management and mitigation plan as a condition of approval for an application for a
19 permit to appropriate water or to change the point of diversion, manner of use or
20 place of use of water already appropriated even if the State Engineer does not find
21 that the proposed use or change set forth in the application conflicts with existing
22 water rights or protectable interests in domestic wells. **Section 2** also requires the



23 plan to, without limitation, specify measures that will be taken by the applicant to
24 avoid and, if necessary, mitigate future conflicts that may occur.

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 1. *If the proposed use or change set forth in an application*
4 *conflicts with existing rights or protectable interests in existing*
5 *domestic wells as set forth in NRS 533.024, before rejecting the*
6 *application, the State Engineer may determine if the conflict can*
7 *be eliminated.*

8 2. *To make a determination about whether the conflict can be*
9 *eliminated, the State Engineer must:*

10 (a) *Inform the applicant and every holder of existing rights*
11 *and owner of a domestic well with whom the application conflicts*
12 *about the application and the conflict;*

13 (b) *Request that the applicant and such holders of existing*
14 *rights and owners of domestic wells work together to determine if*
15 *the applicant, holders and owners can reach an agreement for one*
16 *or more of the parties to implement some measure or take some*
17 *action that will result in the elimination of the conflict; and*

18 (c) *If the applicant and such holders of existing rights and*
19 *owners of domestic wells all reach an agreement described in*
20 *paragraph (b), consider the agreement in a public hearing.*

21 3. *If the State Engineer determines that the measures set*
22 *forth in the agreement will eliminate the conflict, the State*
23 *Engineer may approve the application on the condition that before*
24 *the applicant appropriates the water to beneficial use:*

25 (a) *Any measure or action agreed to by the parties is taken;*
26 *and*

27 (b) *The conflict must be eliminated.*

28 **Sec. 2.** NRS 533.353 is hereby amended to read as follows:

29 533.353 1. *The State Engineer may require a person who*
30 *submits an application to appropriate water for beneficial use to*
31 *submit a monitoring, management and mitigation plan even if the*
32 *State Engineer does not find that the proposed use or change set*
33 *forth in the application conflicts with existing rights or with*
34 *protectable interests in existing domestic wells as set forth in NRS*
35 *533.024. If the State Engineer requires such a plan, the State*
36 *Engineer must consider the plan at a public hearing before*
37 *approving the plan and the application.*

38 2. *A monitoring, management and mitigation plan must,*
39 *without limitation, specify the measures for monitoring,*



1 *management and mitigation that the applicant will take to avoid*
2 *and, if necessary, mitigate conflicts that may occur with existing*
3 *rights or with protectable interests in existing domestic wells as set*
4 *forth in NRS 533.024 if the State Engineer approves the*
5 *application, including, without limitation, triggers and thresholds*
6 *for implementing the plan.*

7 3. For each new application to appropriate water for a
8 beneficial use filed on or after January 1, 2012, if the State Engineer
9 requires a monitoring, management and mitigation plan as a
10 condition of appropriating water for a beneficial use, the State
11 Engineer shall, within 30 days after requiring the plan and if
12 requested by the county where the State Engineer has approved the
13 point of diversion, allow the county to participate in an advisory
14 capacity in the development and implementation of the plan.

15 ~~12~~ 4. Before approving any plan developed pursuant to
16 subsection ~~11~~ 3 and during the period in which the plan, if
17 approved, is carried out, the State Engineer shall consider any
18 comment, analysis or other information submitted by the
19 participating county ~~11~~ *or a holder of existing rights or owner of a*
20 *domestic well with whom the application or the plan may affect.*
21 The State Engineer is not required to include any comment, analysis
22 or other information submitted by a participating county *or a holder*
23 *of existing rights or owner of a domestic well with whom the*
24 *application or the plan may affect* in a monitoring, management
25 and mitigation plan required pursuant to this section.

26 ~~13~~ 5. A decision by the State Engineer whether or not to
27 include in the plan or to follow any comment, analysis or other
28 information submitted by a participating county pursuant to this
29 section is not subject to judicial review pursuant to NRS 533.450.

30 **Sec. 3.** NRS 533.370 is hereby amended to read as follows:

31 533.370 1. Except as otherwise provided in this section and
32 NRS 533.345, 533.371, 533.372 and 533.503, the State Engineer
33 shall approve an application submitted in proper form which
34 contemplates the application of water to beneficial use if:

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

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

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

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



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

4 2. Except as otherwise provided in subsection 10 ~~H~~ and
5 *section 1 of this act*, where there is no unappropriated water in the
6 proposed source of supply, or where its proposed use or change
7 conflicts with existing rights or with protectable interests in existing
8 domestic wells as set forth in NRS 533.024, or threatens to prove
9 detrimental to the public interest, the State Engineer shall reject the
10 application and refuse to issue the requested permit. If a previous
11 application for a similar use of water within the same basin has been
12 rejected on those grounds, the new application may be denied
13 without publication.

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

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

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

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

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

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

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

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

36 (b) If an application is protested.

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

21 **Sec. 4.** NRS 533.450 is hereby amended to read as follows:

22 533.450 1. Except as otherwise provided in NRS 533.353,
23 any person feeling aggrieved by any order or decision of the State
24 Engineer, acting in person or through the assistants of the State
25 Engineer or the water commissioner, affecting the person's interests,
26 when the order or decision relates to the administration of
27 determined rights or is made pursuant to NRS 533.270 to 533.445,
28 inclusive, or NRS 533.481, 534.193, 535.200 or 536.200, *or section*
29 *1 of this act*, may have the same reviewed by a proceeding for that
30 purpose, insofar as may be in the nature of an appeal, which must be
31 initiated in the proper court of the county in which the matters
32 affected or a portion thereof are situated, but on stream systems
33 where a decree of court has been entered, the action must be
34 initiated in the court that entered the decree. The order or decision of
35 the State Engineer remains in full force and effect unless
36 proceedings to review the same are commenced in the proper court
37 within 30 days after the rendition of the order or decision in
38 question and notice thereof is given to the State Engineer as
39 provided in subsection 3.

40 2. The proceedings in every case must be heard by the court,
41 and must be informal and summary, but full opportunity to be heard
42 must be had before judgment is pronounced.

43 3. No such proceedings may be entertained unless notice
44 thereof, containing a statement of the substance of the order or
45 decision complained of, and of the manner in which the same



1 injuriously affects the petitioner's interests, has been served upon
2 the State Engineer, personally or by registered or certified mail, at
3 the Office of the State Engineer at the State Capital within 30 days
4 following the rendition of the order or decision in question. A
5 similar notice must also be served personally or by registered or
6 certified mail upon the person who may have been affected by the
7 order or decision.

8 4. Where evidence has been filed with, or testimony taken
9 before, the State Engineer, a transcribed copy thereof, or of any
10 specific part of the same, duly certified as a true and correct
11 transcript in the manner provided by law, must be received in
12 evidence with the same effect as if the reporter were present and
13 testified to the facts so certified. A copy of the transcript must be
14 furnished on demand, at actual cost, to any person affected by the
15 order or decision, and to all other persons on payment of a
16 reasonable amount therefor, to be fixed by the State Engineer.

17 5. An order or decision of the State Engineer must not be
18 stayed unless the petitioner files a written motion for a stay with the
19 court and serves the motion personally or by registered or certified
20 mail upon the State Engineer, the applicant or other real party in
21 interest and each party of record within 10 days after the petitioner
22 files the petition for judicial review. Any party may oppose the
23 motion and the petitioner may reply to any such opposition. In
24 determining whether to grant or deny the motion for a stay, the court
25 shall consider:

26 (a) Whether any nonmoving party to the proceeding may incur
27 any harm or hardship if the stay is granted;

28 (b) Whether the petitioner may incur any irreparable harm if the
29 stay is denied;

30 (c) The likelihood of success of the petitioner on the merits; and

31 (d) Any potential harm to the members of the public if the stay
32 is granted.

33 6. Except as otherwise provided in this subsection, the
34 petitioner must file a bond in an amount determined by the court,
35 with sureties satisfactory to the court and conditioned in the manner
36 specified by the court. The bond must be filed within 5 days after
37 the court determines the amount of the bond pursuant to this
38 subsection. If the petitioner fails to file the bond within that period,
39 the stay is automatically denied. A bond must not be required for a
40 public agency of this State or a political subdivision of this State.

41 7. Costs must be paid as in civil cases brought in the district
42 court, except by the State Engineer or the State.

43 8. The practice in civil cases applies to the informal and
44 summary character of such proceedings, as provided in this section.



1 9. Appeals may be taken to the appellate court of competent
2 jurisdiction pursuant to the rules fixed by the Supreme Court
3 pursuant to Section 4 of Article 6 of the Nevada Constitution from
4 the judgment of the district court in the same manner as in other
5 civil cases.

6 10. The decision of the State Engineer is prima facie correct,
7 and the burden of proof is upon the party attacking the same.

8 11. Whenever it appears to the State Engineer that any
9 litigation, whether now pending or hereafter brought, may adversely
10 affect the rights of the public in water, the State Engineer shall
11 request the Attorney General to appear and protect the interests of
12 the State.

13 **Sec. 5.** NRS 533.515 is hereby amended to read as follows:

14 533.515 1. No permit for the appropriation of water or
15 application to change the point of diversion under an existing water
16 right may be denied because of the fact that the point of diversion
17 described in the application for the permit, or any portion of the
18 works in the application described and to be constructed for the
19 purpose of storing, conserving, diverting or distributing the water
20 are situated in any other state; but in all such cases where the place
21 of intended use, or the lands, or part of the lands to be irrigated by
22 means of the water, are situated within this state, the permit must be
23 issued as in other cases, pursuant to the provisions of NRS 533.324
24 to 533.450, inclusive, *and section 1 of this act*, and chapter 534 of
25 NRS.

26 2. The permit must not purport to authorize the doing or
27 refraining from any act or thing, in connection with the system of
28 appropriation, not properly within the scope of the jurisdiction of
29 this state and the State Engineer to grant.

30 **Sec. 6.** NRS 534.110 is hereby amended to read as follows:

31 534.110 1. The State Engineer shall administer this chapter
32 and shall prescribe all necessary regulations within the terms of this
33 chapter for its administration.

34 2. The State Engineer may:

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

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

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

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



1 (b) Whose reasonably expected rate of diversion is one-half
2 cubic foot per second or more,
3 ➔ to report periodically to the State Engineer concerning the effect
4 of that well on other previously existing wells that are located within
5 2,500 feet of the well.

6 4. It is a condition of each appropriation of groundwater
7 acquired under this chapter that the right of the appropriator relates
8 to a specific quantity of water and that the right must allow for a
9 reasonable lowering of the static water level at the appropriator's
10 point of diversion. In determining a reasonable lowering of the static
11 water level in a particular area, the State Engineer shall consider the
12 economics of pumping water for the general type of crops growing
13 and may also consider the effect of using water on the economy of
14 the area in general.

15 5. This section does not prevent the granting of permits to
16 applicants later in time on the ground that the diversions under the
17 proposed later appropriations may cause the water level to be
18 lowered at the point of diversion of a prior appropriator, so long as
19 any protectable interests in existing domestic wells as set forth in
20 NRS 533.024 and the rights of holders of existing appropriations
21 can be satisfied under such express conditions **H** *under a*
22 *monitoring, management and mitigation plan approved pursuant*
23 *to NRS 533.353*. At the time a permit is granted for a well:

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

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

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

33 6. Except as otherwise provided in subsection 7, the State
34 Engineer shall conduct investigations in any basin or portion thereof
35 where it appears that the average annual replenishment to the
36 groundwater supply may not be adequate for the needs of all
37 permittees and all vested-right claimants, and if the findings of the
38 State Engineer so indicate, the State Engineer may order that
39 withdrawals, including, without limitation, withdrawals from
40 domestic wells, be restricted to conform to priority rights.

41 7. The State Engineer:

42 (a) May designate as a critical management area any basin in
43 which withdrawals of groundwater consistently exceed the perennial
44 yield of the basin.



1 (b) Shall designate as a critical management area any basin in
2 which withdrawals of groundwater consistently exceed the perennial
3 yield of the basin upon receipt of a petition for such a designation
4 which is signed by a majority of the holders of certificates or
5 permits to appropriate water in the basin that are on file in the Office
6 of the State Engineer.

7 ↪ The designation of a basin as a critical management area pursuant
8 to this subsection may be appealed pursuant to NRS 533.450. If a
9 basin has been designated as a critical management area for at least
10 10 consecutive years, the State Engineer shall order that
11 withdrawals, including, without limitation, withdrawals from
12 domestic wells, be restricted in that basin to conform to priority
13 rights, unless a groundwater management plan has been approved
14 for the basin pursuant to NRS 534.037.

15 8. In any basin or portion thereof in the State designated by the
16 State Engineer, the State Engineer may restrict drilling of wells in
17 any portion thereof if the State Engineer determines that additional
18 wells would cause an undue interference with existing wells. Any
19 order or decision of the State Engineer so restricting drilling of such
20 wells may be reviewed by the district court of the county pursuant to
21 NRS 533.450.

22 **Sec. 7.** This act becomes effective on July 1, 2017.



