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A.B. 356

ASSEMBLY BILL NO. 356—COMMITTEE ON WAYS AND MEANS

(ON BEHALF OF THE OFFICE OF FINANCE
IN THE OFFICE OF THE GOVERNOR)

MARCH 22, 2021

Referred to Committee on Natural Resources

SUMMARY—Makes various changes relating to the conservation of water. (BDR 48-1090)

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

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

AN ACT relating to water; creating and setting forth the requirements for the Program for the Conservation of Water; creating the Account for Purchasing and Retiring Water Rights; authorizing the State Engineer to purchase and retire certain water rights with money from the Account; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, any person who wishes to appropriate public waters, or to
2 change the place of diversion, manner of use or place of use of water already
3 appropriated must apply to the State Engineer for a permit to do so. (NRS 533.325)
4 Existing law further provides that the failure to use beneficially all or part of a
5 water right may result in the forfeiture of the unused water. (NRS 534.090)

6 **Sections 2-18** of this bill create a voluntary program for water conservation
7 which allows certain persons holding perfected water rights that are used for
8 irrigation to apply to the State Engineer for an allocation of conserved water based
9 on conservation measures implemented by the person which allow the person to
10 conserve water. The conserved water will be allocated between the applicant and
11 the source of the water to create a reserve of water in each basin.

12 **Section 7** of this bill creates the Program for the Conservation of Water and
13 prohibits the State Engineer from requiring any person to conserve water pursuant
14 to, or otherwise participate in, the Program.

15 **Sections 3-6** of this bill define various terms related to the Program.

16 **Section 8** of this bill sets forth the requirements for a person or group of
17 persons who hold one or more perfected water rights which lists irrigation as the



18 manner of use to submit an application to the State Engineer for participation in the
19 Program in order to obtain an allocation of conserved water resulting from one or
20 more conservation measures. The application must: (1) propose one or more
21 conservation measures that the applicant will implement if the application is
22 approved; or (2) describe one or more conservation measures that the applicant has
23 already implemented. **Section 9** of this bill requires the State Engineer to reject an
24 application if any conservation measure was implemented more than 5 years before
25 the date on which the application is submitted.

26 **Section 30** of this bill sets forth a fee to apply for participation in the Program.

27 **Section 10** of this bill requires the State Engineer to publish a notice of an
28 application for participation in the Program.

29 **Section 11** of this bill: (1) authorizes any person to object to an allocation of
30 conserved water proposed in an application by filing a written protest with the State
31 Engineer; and (2) requires the State Engineer to consider any such protest.

32 **Section 12** of this bill sets forth the requirements for the State Engineer in
33 reviewing an application for an allocation of conserved water, which include
34 determining the quantity of conserved water that will result from the conservation
35 measures if the application is approved and whether there will be any conflicts or
36 impacts on other existing water rights or protectable interests in domestic wells that
37 require mitigation. **Section 12** also requires the State Engineer to deny an
38 application if the State Engineer determines that the proposed allocation of
39 conserved water to the applicant will result in a conflict with any existing water
40 right or protectable interest in a domestic well or otherwise threaten the public
41 interest. **Section 25** of this bill authorizes the State Engineer to consider the
42 consumptive use of a water right and the consumptive use of a proposed beneficial
43 use of water in determining whether the proposed allocation of conserved water
44 creates such a conflict.

45 **Section 13** of this bill provides that if an application is approved, the State
46 Engineer will issue to the applicant a new certificate for the remainder of the
47 existing water right and, once the conservation measure is fully implemented, a
48 new permit for the allocation of conserved water. **Section 13** also provides that the
49 priority date of the new certificate and permit is the same as the priority date of the
50 original water right.

51 **Section 14** of this bill requires the State Engineer to reserve conserved water
52 allocated to the source until 10 percent of the perennial yield of the basin has been
53 reserved. Such reserved water is not available for any use. **Section 20** of this bill
54 makes a conforming change to provisions that require the reserve of groundwater
55 under certain circumstances.

56 **Section 15** of this bill provides that a person is not required to submit an
57 application for a permit to change the place of diversion, manner of use or place of
58 use in relation to any conserved water. **Section 23** of this bill makes a conforming
59 change to the general requirement to submit such an application.

60 **Section 16** of this bill provides that a person who receives an allocation of
61 conserved water may: (1) reserve the water for future use; or (2) use, sell, lease or
62 transfer the conserved water. An allocation of conserved water that is reserved for
63 future use is not subject to cancellation, forfeiture or abandonment. **Sections 22,**
64 **27-29 and 35** of this bill make conforming changes to provisions relating to
65 cancellation, forfeiture and abandonment.

66 **Section 17** of this bill authorizes a political subdivision to purchase or accept a
67 gift of a right to the use of conserved water. **Section 17** also provides that the
68 political subdivision may request that the water remain in the source and the right
69 to the use of such conserved water that remains in the source is not subject to
70 appropriation, cancellation, forfeiture or abandonment. **Sections 21, 22, 24, 26-29**
71 **and 35** of this bill make conforming changes relating to appropriation, cancellation,
72 forfeiture and abandonment.



73 **Section 18** of this bill requires the State Engineer to adopt regulations to carry
74 out the Program for the Conservation of Water.

75 **Section 31** of this bill authorizes a person who is aggrieved by a decision of the
76 State Engineer in regards to the Program for the Conservation of Water to seek
77 judicial review.

78 **Section 19** of this bill revises the policies of the State to include various
79 provisions relating to water conservation.

80 **Section 33** of this bill creates the Account for Purchasing and Retiring Water
81 Rights and requires that the money in the Account only be expended for the
82 purchase of water rights in groundwater basins that are over appropriated. **Section**
83 **34** of this bill establishes the Purchasing and Retiring Water Rights Program,
84 administered by the State Engineer, and establishes requirements for the purchase
85 and retirement of water rights by the State Engineer. **Sections 21, 24 and 26** of this
86 act prohibit the appropriation of water that has been withdrawn pursuant to the
87 Purchasing and Retiring Water Rights Program.

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 the provisions set forth as sections 2 to 18, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 18, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 6, inclusive, of this act, have the meanings*
7 *ascribed to them in those sections.*

8 **Sec. 3.** *“Conservation” means a reduction of the amount of*
9 *water diverted or pumped for irrigation that is achieved:*

10 1. *By improving the technology or method used to divert,*
11 *pump, transport, apply or recover the water; or*

12 2. *By using some other measure that is approved by the State*
13 *Engineer.*

14 **Sec. 4.** *“Conserved water” means the amount of water that*
15 *results from the implementation of one or more conservation*
16 *measures, which is measured as the difference between:*

17 1. *The smaller of:*

18 (a) *The amount stated on the perfected water right; or*

19 (b) *The maximum amount of water for irrigation that may be*
20 *diverted using existing works for the diversion of water; and*

21 2. *The amount of water needed for irrigation after the*
22 *conservation measure or measures, as applicable, have been*
23 *implemented.*

24 **Sec. 5.** *“Perfected water right” means a water right that has*
25 *been finalized through the issuance of:*

26 1. *A certificate of appropriation; or*

27 2. *A court decree.*



1 **Sec. 6.** *“Program” means the Program for the Conservation*
2 *of Water created by section 7 of this act.*

3 **Sec. 7.** *1. The Program for the Conservation of Water is*
4 *hereby created.*

5 *2. The provisions of sections 2 to 18, inclusive, of this act*
6 *apply to the Program.*

7 *3. The State Engineer shall not require any person to*
8 *conserve water pursuant to, or otherwise participate in, the*
9 *Program.*

10 **Sec. 8.** *1. Except as otherwise provided in subsection 3, a*
11 *person or group of persons who hold one or more perfected water*
12 *rights which list irrigation as the manner of use may submit an*
13 *application to the State Engineer for participation in the Program*
14 *in order to obtain an allocation of conserved water for one or*
15 *more conservation measures that:*

16 *(a) The person or group intends to implement if the*
17 *application is approved by the State Engineer; or*

18 *(b) Were implemented by the person or group not more than 5*
19 *years before the date on which the person submits the application.*

20 *2. An application submitted pursuant to subsection 1 must*
21 *include the following:*

22 *(a) For a conservation measure that will be implemented if the*
23 *application is approved:*

24 *(1) A description of the conservation measure.*

25 *(2) A description of the existing works of diversion and an*
26 *estimate of the amount of water that can be diverted at the works*
27 *of diversion.*

28 *(3) The amount of water that the applicant will need for*
29 *irrigation after the implementation of the conservation measure.*

30 *(4) The amount of conserved water expected from the*
31 *implementation of the conservation measure.*

32 *(5) The proposed allocation of the conserved water between*
33 *the applicant and the source of the water. The proposed allocation*
34 *must reserve at least 25 percent of any conserved water back to the*
35 *source.*

36 *(6) The intended use of the conserved water allocated to the*
37 *applicant if the application is approved.*

38 *(7) If any of the applicant’s perfected water rights are for*
39 *surface water located within the boundaries of an irrigation*
40 *district, evidence that a majority of the board of directors of the*
41 *irrigation district has approved a request to submit the application*
42 *pursuant to subsection 3.*

43 *(8) Any other information the State Engineer considers*
44 *necessary to evaluate the application.*



1 (b) For a conservation measure that was implemented before
2 the application was submitted:

3 (1) A description of the conservation measure and the date
4 on which the conservation measure was implemented by the
5 applicant.

6 (2) A description of the works of diversion before the
7 conservation measure was implemented and the amount of water
8 that could be diverted at the works of diversion before the
9 conservation measure was implemented.

10 (3) The amount of water that the applicant uses for
11 irrigation since the implementation of the conservation measure.

12 (4) The amount of conserved water that resulted from the
13 implementation of the conservation measure.

14 (5) The proposed allocation of the conserved water between
15 the applicant and the source of the water. The proposed allocation
16 must reserve at least 25 percent of any conserved water back to the
17 source.

18 (6) The intended use of the conserved water allocated to the
19 applicant if the application is approved.

20 (7) If the applicant's perfected water right is for surface
21 water located within the boundaries of an irrigation district,
22 evidence that a majority of the board of directors of the irrigation
23 district has approved a request to submit the application pursuant
24 to subsection 3.

25 (8) Evidence that the conservation measure was
26 implemented not more than 5 years before the date on which the
27 application is filed with the State Engineer.

28 (9) Any other information the State Engineer considers
29 necessary to evaluate the application.

30 3. If any of the perfected water right or rights are for surface
31 water located within the boundaries of an irrigation district, the
32 person or group must obtain approval to submit an application for
33 participation in the Program to the board of directors of the
34 irrigation district before submitting an application to the State
35 Engineer. If a majority of the board of directors of the irrigation
36 district approves the request to submit an application for
37 participation in the Program, the person or group may submit an
38 application to the State Engineer pursuant to subsection 1.

39 **Sec. 9.** If an applicant submits an application for
40 participation in the Program that relates to a conservation
41 measure that was implemented by the applicant more than 5 years
42 before the date on which the application is submitted, the State
43 Engineer:

44 1. Must immediately reject the application; and



1 2. *Must not publish the application pursuant to section 10 of*
2 *this act.*

3 **Sec. 10.** 1. *Except as otherwise provided in section 9 of this*
4 *act, within 30 days after the receipt of an application submitted*
5 *pursuant to section 8 of this act, the State Engineer shall publish*
6 *once a week for 4 consecutive weeks in a newspaper of general*
7 *circulation in the county where the point of diversion is located, a*
8 *notice of the application which sets forth:*

9 (a) *That the application has been filed;*

10 (b) *The date of the filing;*

11 (c) *The name and address of the applicant;*

12 (d) *The name of the source of the perfected water right to*
13 *which the application pertains;*

14 (e) *The location of the point of diversion, described by:*

15 (1) *Legal subdivision or metes and bounds; and*

16 (2) *A physical description.*

17 (f) *The applicant's intended use of his or her allocation of*
18 *conserved water if the application is approved.*

19 ↪ *The publisher shall add to the notice the date of the first*
20 *publication and the date of the last publication.*

21 2. *Proof of publication must be filed within 30 days after the*
22 *final day of publication. The State Engineer shall pay for the*
23 *publication from the publication fee required pursuant to NRS*
24 *533.435. If the application is cancelled for any reason before*
25 *publication, the State Engineer shall return to the applicant the*
26 *fee collected for publication.*

27 **Sec. 11.** 1. *Any person may object to the allocation of*
28 *conserved water proposed in an application for the Program by*
29 *filing a written protest with the State Engineer. The protest must*
30 *set forth with reasonable certainty the grounds of such protest and*
31 *be verified by the affidavit of the protestant, or an agent or*
32 *attorney thereof.*

33 2. *Upon receipt of a protest that complies with the*
34 *requirements of subsection 1, the State Engineer shall notify the*
35 *applicant of the protest by certified mail.*

36 3. *The State Engineer shall consider the protest and may, in*
37 *his or her discretion, hold a hearing and require the filing of such*
38 *evidence as the State Engineer deems necessary for a full*
39 *understanding of the rights involved. The State Engineer shall*
40 *give notice of the hearing by certified mail to both the applicant*
41 *and the protestant. The notice must state the time and place at*
42 *which the hearing is to be held and must be mailed not less than*
43 *15 days before the date set for the hearing.*

44 4. *The applicant and protestant shall, in accordance with a*
45 *schedule established by the State Engineer, provide to the State*



1 *Engineer and to each other the information required by the State*
2 *Engineer relating to the application or protest.*

3 *5. If the State Engineer holds a hearing pursuant to*
4 *subsection 3, the State Engineer shall render a decision on the*
5 *application not later than 240 days after the later of:*

6 *(a) The date all transcripts of the hearing become available to*
7 *the State Engineer; or*

8 *(b) The date specified by the State Engineer for the filing of*
9 *any additional information, evidence, studies or compilations*
10 *requested by the State Engineer. The State Engineer may, for good*
11 *cause shown, extend any applicable period.*

12 *6. Any hearing must be held in accordance with the rules of*
13 *practice adopted by the State Engineer pursuant to subsection 7 of*
14 *NRS 533.365.*

15 **Sec. 12. 1. The State Engineer shall determine:**

16 *(a) The quantity of conserved water that will result from the*
17 *conservation measures if the State Engineer approves the*
18 *application;*

19 *(b) Whether the approval of the application will result in a*
20 *conflict with any other existing water rights or with protectable*
21 *interests in existing domestic wells, or otherwise threatens to prove*
22 *detrimental to the public interest; and*

23 *(c) Whether there is any need to mitigate the conservation*
24 *impacts of the application on other existing water rights or*
25 *protectable interests in existing domestic wells.*

26 *2. The State Engineer shall deny the application if the State*
27 *Engineer determines the allocation of conserved water to the*
28 *applicant will result in a conflict with any existing water right or*
29 *protectable interest in a domestic well or otherwise threaten the*
30 *public interest.*

31 **Sec. 13. 1. If the State Engineer approves an application**
32 **for an allocation of conserved water, the State Engineer must:**

33 *(a) Issue the applicant a new certificate for the unaffected*
34 *portion of his or her original perfected water right; and*

35 *(b) Issue the applicant a new permit to appropriate water for*
36 *the allocation of conserved water as soon as the applicant*
37 *demonstrates that the conservation measure has been fully*
38 *implemented.*

39 *2. The priority date of the new certificate and permit issued*
40 *by the State Engineer pursuant to this section is the same as the*
41 *priority date of the original perfected water right.*

42 *3. A certificate or permit for the allocation of conserved water*
43 *issued pursuant to this section has the same legal status as any*
44 *other water right for which a permit or certificate has been issued*
45 *pursuant to the provisions of chapter 533 of NRS, regardless of*



1 *whether the conserved water is reserved for future use or managed*
2 *in the source.*

3 **Sec. 14.** 1. *The State Engineer shall notify the applicant*
4 *and any other person who has requested notice of the disposition*
5 *of the application and the allocation of conserved water proposed*
6 *by the State Engineer. If the State Engineer approves an*
7 *application, he or she must allocate at least 25 percent of the*
8 *conserved water to the source.*

9 2. *In each hydrographic basin, the State Engineer:*

10 (a) *Shall reserve all conserved water allocated to the source*
11 *pursuant to the Program until 10 percent of the perennial yield of*
12 *the basin has been reserved pursuant to this section and NRS*
13 *533.0241. The conserved water held in reserve is not available for*
14 *any use.*

15 (b) *May make any conserved water not held in reserve*
16 *available for appropriation in accordance with the provisions of*
17 *NRS 533.324 to 533.435, inclusive.*

18 **Sec. 15.** *A person is not required to submit an application for*
19 *a permit to change the place of diversion, manner of use or place*
20 *of use pursuant to NRS 533.345 in relation to any conserved*
21 *water.*

22 **Sec. 16.** 1. *Any person who has been allocated conserved*
23 *water pursuant to the Program may:*

24 (a) *Reserve the conserved water for future use;*

25 (b) *Use the conserved water on another property owned by the*
26 *person; or*

27 (c) *Sell, lease or transfer the right to the use of the conserved*
28 *water.*

29 2. *If a person sells, leases or transfers the right to the use of*
30 *the conserved water:*

31 (a) *The person must notify the State Engineer; and*

32 (b) *The provisions of NRS 533.382 to 533.387, inclusive, apply*
33 *to the conveyance.*

34 3. *Any permit or right to conserved water that is reserved for*
35 *future use is not subject to cancellation pursuant to NRS 533.390,*
36 *533.395 or 533.410 or to abandonment or forfeiture pursuant to*
37 *NRS 533.060 or 534.090.*

38 **Sec. 17.** 1. *A political subdivision of this State may:*

39 (a) *Purchase a right to the use of conserved water or accept a*
40 *gift of a right to the use of conserved water; and*

41 (b) *Request that any conserved water held by the political*
42 *subdivision remain in the source.*

43 2. *If a political subdivision of this State requests that*
44 *conserved surface water remain in the source, the State Engineer,*
45 *water commissioner, water master or other entity responsible for*



1 *the distribution of the conserved water must manage the conserved*
2 *water to ensure that the conserved water remains in the source.*
3 *Such water is not available for any use.*

4 3. *Any permit or right to conserved water that is managed in*
5 *the source pursuant to this section is not subject to cancellation*
6 *pursuant to NRS 533.390, 533.395 or 533.410 or to abandonment*
7 *or forfeiture pursuant to NRS 533.060 or 534.090.*

8 **Sec. 18.** *The State Engineer shall adopt regulations to carry*
9 *out the provisions of sections 2 to 18, inclusive, of this act, which*
10 *may include, without limitation, formulas or other criteria to:*

11 1. *Evaluate the effects of an allocation of conserved water on*
12 *existing water rights and protectable interests in domestic wells;*
13 *and*

14 2. *Determine to what extent mitigation of the impact of an*
15 *allocation of conserved water on existing water rights or*
16 *protectable interests in domestic wells may be required to avoid a*
17 *conflict.*

18 **Sec. 19.** NRS 533.024 is hereby amended to read as follows:

19 533.024 The Legislature declares that:

20 1. It is the policy of this State:

21 (a) To encourage and promote the use of effluent, where that use
22 is not contrary to the public health, safety or welfare, and where that
23 use does not interfere with federal obligations to deliver water of the
24 Colorado River.

25 (b) To recognize the importance of domestic wells as
26 appurtenances to private homes, to create a protectable interest in
27 such wells and to protect their supply of water from unreasonable
28 adverse effects which are caused by municipal, quasi-municipal or
29 industrial uses and which cannot reasonably be mitigated.

30 (c) To encourage the State Engineer to consider the best
31 available science in rendering decisions concerning the available
32 surface and underground sources of water in Nevada.

33 (d) To encourage and promote the use of water to prevent or
34 reduce the spread of wildfire or to rehabilitate areas burned by
35 wildfire, including, without limitation, through the establishment of
36 vegetative cover that is resistant to fire.

37 (e) To manage conjunctively the appropriation, use and
38 administration of all waters of this State, regardless of the source of
39 the water.

40 (f) *To recognize, encourage and promote the conservation and*
41 *efficient use of water for current and future needs by reducing*
42 *consumptive waste, improving water quality and allowing for the*
43 *reservation of water within a stream or groundwater system.*



1 (g) *To encourage local cooperation and coordination in the*
2 *development of conservation projects to provide incentives for*
3 *increased water efficiency.*

4 (h) *To encourage the highest and best use of water by allowing*
5 *the sale, lease or transfer of conserved water.*

6 2. The procedures in this chapter for changing the place of
7 diversion, manner of use or place of use of water, and for
8 confirming a report of conveyance, are not intended to have the
9 effect of quieting title to or changing ownership of a water right and
10 that only a court of competent jurisdiction has the power to
11 determine conflicting claims to ownership of a water right.

12 **Sec. 20.** NRS 533.0241 is hereby amended to read as follows:

13 533.0241 1. For each basin in which there is groundwater
14 that has not been committed for use, including, without limitation,
15 pursuant to a permit, certificate or by any other water user in the
16 basin, as of June 5, 2019, the State Engineer shall reserve 10 percent
17 of the total remaining groundwater that has not been committed for
18 use in the basin. *The amount of groundwater required to be*
19 *reserved pursuant to this section includes any amount allocated to*
20 *the source by the State Engineer pursuant to section 14 of this act.*

21 2. The groundwater in the basin from the reserve created
22 pursuant to subsection 1 is not available for any use.

23 **Sec. 21.** NRS 533.030 is hereby amended to read as follows:

24 533.030 1. Subject to existing rights, and except as otherwise
25 provided in this section and NRS 533.0241 and 533.027, *and*
26 *sections 2 to 18, inclusive, of this act and section 34 of this act*, all
27 water may be appropriated for beneficial use as provided in this
28 chapter and not otherwise.

29 2. The use of water, from any stream system as provided in this
30 chapter and from underground water as provided in NRS 534.080,
31 for any recreational purpose, or the use of water from the Muddy
32 River or the Virgin River to create any developed shortage supply or
33 intentionally created surplus, is hereby declared to be a beneficial
34 use. As used in this subsection:

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

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

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

43 (a) The board of county commissioners may prohibit or restrict
44 by ordinance the use of water and effluent for recreational purposes



1 in any artificially created lake or stream located within the
2 unincorporated areas of the county.

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

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

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

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

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

17 **Sec. 22.** NRS 533.060 is hereby amended to read as follows:

18 533.060 1. Rights to the use of water must be limited and
19 restricted to as much as may be necessary, when reasonably and
20 economically used for irrigation and other beneficial purposes,
21 irrespective of the carrying capacity of the ditch. The balance of the
22 water not so appropriated must be allowed to flow in the natural
23 stream from which the ditch draws its supply of water, and must not
24 be considered as having been appropriated thereby.

25 2. Rights to the use of surface water shall not be deemed to be
26 lost or otherwise forfeited for the failure to use the water therefrom
27 for a beneficial purpose.

28 3. A surface water right that is appurtenant to land formerly
29 used primarily for agricultural purposes is not subject to a
30 determination of abandonment if the surface water right:

31 (a) Is appurtenant to land that has been converted to urban use;
32 or

33 (b) Has been dedicated to or acquired by a water purveyor,
34 public utility or public body for municipal use.

35 4. *A surface water right that has been reserved or requested*
36 *to remain in the source pursuant to the Program for the*
37 *Conservation of Water created by section 7 of this act is not*
38 *subject to a determination of abandonment.*

39 5. In a determination of whether a right to use surface water
40 has been abandoned, a presumption that the right to use the surface
41 water has not been abandoned is created upon the submission of
42 records, photographs, receipts, contracts, affidavits or any other
43 proof of the occurrence of any of the following events or actions
44 within a 10-year period immediately preceding any claim that the
45 right to use the water has been abandoned:



- 1 (a) The delivery of water;
- 2 (b) The payment of any costs of maintenance and other
- 3 operational costs incurred in delivering the water;
- 4 (c) The payment of any costs for capital improvements,
- 5 including works of diversion and irrigation; or
- 6 (d) The actual performance of maintenance related to the
- 7 delivery of the water.

8 ~~15.1~~ 6. A prescriptive right to the use of the water or any of the
9 public water appropriated or unappropriated may not be acquired by
10 adverse possession. Any such right to appropriate any of the water
11 must be initiated by applying to the State Engineer for a permit to
12 appropriate the water as provided in this chapter.

13 ~~16.1~~ 7. The State of Nevada reserves for its own present and
14 future use all rights to the use and diversion of water acquired
15 pursuant to chapter 462, Statutes of Nevada 1963, or otherwise
16 existing within the watersheds of Marlette Lake, Franktown Creek
17 and Hobart Creek and not lawfully appropriated on April 26, 1963,
18 by any person other than the Marlette Lake Company. Such a right
19 must not be appropriated by any person without the express consent
20 of the Legislature.

21 **Sec. 23.** NRS 533.325 is hereby amended to read as follows:

22 533.325 Except as otherwise provided in NRS 533.027 and
23 534.065, *and section 15 of this act*, any person who wishes to
24 appropriate any of the public waters, or to change the place of
25 diversion, manner of use or place of use of water already
26 appropriated, shall, before performing any work in connection with
27 such appropriation, change in place of diversion or change in
28 manner or place of use, apply to the State Engineer for a permit to
29 do so.

30 **Sec. 24.** NRS 533.370 is hereby amended to read as follows:

31 533.370 1. Except as otherwise provided in this section and
32 NRS 533.0241, 533.345, 533.371, 533.372 and 533.503, the State
33 Engineer shall approve an application submitted in proper form
34 which 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, ~~[where there]~~
5 *the State Engineer shall reject an application and refuse to issue*
6 *the requested permit if:*

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

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

11 (c) *The water has been reserved or requested to remain in the*
12 *source pursuant to the Program for the Conservation of Water*
13 *created by section 7 of this act;*

14 (d) *The groundwater has been withdrawn pursuant to section*
15 *34 of this act;* or ~~[where its]~~

16 (e) *The* proposed use or change conflicts with existing rights or
17 with protectable interests in existing domestic wells as set forth in
18 NRS 533.024, or threatens to prove detrimental to the public interest
19 ~~. [, the State Engineer shall reject the application and refuse to issue~~
20 ~~the requested permit.]~~

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

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

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

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

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

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

39 (e) Any other factor the State Engineer determines to be
40 relevant.

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

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



1 (b) If an application is protested.

2 (c) If the purpose for which the application was made is
3 municipal use.

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

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

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

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

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

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

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

21 6. Except as otherwise provided in this subsection and
22 subsection 10, the State Engineer shall approve or reject, within 6
23 months after the final date for filing a protest, an application filed to
24 change the point of diversion of water already appropriated when
25 the existing and proposed points of diversion are on the same
26 property for which the water has already been appropriated under
27 the existing water right or the proposed point of diversion is on real
28 property that is proven to be owned by the applicant and is
29 contiguous to the place of use of the existing water right. The State
30 Engineer may postpone action on the application pursuant to
31 subsection 4.

32 7. If the State Engineer has not approved, rejected or held a
33 hearing on an application within 7 years after the final date for filing
34 a protest, the State Engineer shall cause notice of the application to
35 be republished pursuant to NRS 533.360 immediately preceding the
36 time at which the State Engineer is ready to approve or reject
37 the application. The cost of the republication must be paid by the
38 applicant. After such republication, a protest may be filed in
39 accordance with NRS 533.365.

40 8. If a hearing is held regarding an application, the decision of
41 the State Engineer must be in writing and include findings of fact,
42 conclusions of law and a statement of the underlying facts
43 supporting the findings of fact. The written decision may take the
44 form of a transcription of an oral ruling. The rejection or approval of
45 an application must be endorsed on a copy of the original



1 application, and a record must be made of the endorsement in the
2 records of the State Engineer. The copy of the application so
3 endorsed must be returned to the applicant. Except as otherwise
4 provided in subsection 11, if the application is approved, the
5 applicant may, on receipt thereof, proceed with the construction of
6 the necessary works and take all steps required to apply the water to
7 beneficial use and to perfect the proposed appropriation. If the
8 application is rejected, the applicant may take no steps toward the
9 prosecution of the proposed work or the diversion and use of
10 the public water while the rejection continues in force.

11 9. If a person is the successor in interest of an owner of a water
12 right or an owner of real property upon which a domestic well is
13 located and if the former owner of the water right or real property on
14 which a domestic well is located had previously filed a written
15 protest against the granting of an application, the successor in
16 interest must be allowed to pursue that protest in the same manner
17 as if the successor in interest were the former owner whose interest
18 he or she succeeded. If the successor in interest wishes to pursue the
19 protest, the successor in interest must notify the State Engineer in a
20 timely manner on a form provided by the State Engineer.

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

24 11. The provisions of subsection 8 do not authorize the
25 recipient of an approved application to use any state land
26 administered by the Division of State Lands of the State Department
27 of Conservation and Natural Resources without the appropriate
28 authorization for that use from the State Land Registrar.

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

31 **Sec. 25.** NRS 533.3703 is hereby amended to read as follows:

32 533.3703 1. The State Engineer may consider the
33 consumptive use of a water right and the consumptive use of a
34 proposed beneficial use of water in determining whether ~~it~~:

35 (a) A proposed change in the place of diversion, manner of use
36 or place of use complies with the provisions of subsection 2 of NRS
37 533.370 ~~it~~; or

38 (b) *A proposed allocation of conserved water conflicts with*
39 *existing rights or with protectable interests in existing domestic*
40 *wells, or threatens to prove detrimental to the public interest*
41 *pursuant to the Program for the Conservation of Water created by*
42 *section 7 of this act.*

43 2. The provisions of this section:



1 (a) Must not be applied by the State Engineer in a manner that is
2 inconsistent with any applicable federal or state decree concerning
3 consumptive use.

4 (b) Do not apply to any decreed, certified or permitted right to
5 appropriate water which originates in the Virgin River or the Muddy
6 River.

7 **Sec. 26.** NRS 533.371 is hereby amended to read as follows:

8 533.371 The State Engineer shall reject the application and
9 refuse to issue a permit to appropriate water for a specified period if
10 the State Engineer determines that:

- 11 1. The application is incomplete;
- 12 2. The prescribed fees have not been paid;
- 13 3. The proposed use is not temporary;
- 14 4. There is no water available from the proposed source of
15 supply without exceeding the perennial yield or safe yield of that
16 source;
- 17 5. The groundwater that has not been committed for use from
18 the proposed source of supply has been reserved pursuant to
19 NRS 533.0241;

20 6. *The available water has been reserved or requested to*
21 *remain in the source pursuant to the Program for the*
22 *Conservation of Water created by section 7 of this act;*

23 7. *The groundwater has been withdrawn pursuant to section*
24 *34 of this act;*

25 8. The proposed use conflicts with existing rights; or

26 ~~7.9.~~ 9. The proposed use threatens to prove detrimental to the
27 public interest.

28 **Sec. 27.** NRS 533.390 is hereby amended to read as follows:

29 533.390 1. Any person holding a permit from the State
30 Engineer shall, on or before the date set for the completion of the
31 work, file in detail a description of the work as actually constructed.
32 This statement must be verified by the affidavit of the applicant or
33 the applicant's agent or attorney.

34 2. ~~Should~~ *Except as otherwise provided in sections 16 and*
35 *17 of this act, should* any person holding a permit from the State
36 Engineer fail to file with the State Engineer the proof of completion
37 of work, as provided in this chapter, the State Engineer shall advise
38 the holder of the permit, by registered or certified mail, that it is held
39 for cancellation, and should the holder, within 30 days after the
40 mailing of such advice, fail to file the required affidavit, the State
41 Engineer shall cancel the permit. For good cause shown, upon
42 application made prior to the expiration of the 30-day period, the
43 State Engineer may, in his or her discretion, grant an extension of
44 time in which to file the instruments.



1 **Sec. 28.** NRS 533.395 is hereby amended to read as follows:

2 533.395 1. ~~##~~ *Except as otherwise provided in sections 16*
3 *and 17 of this act, if,* at any time in the judgment of the State
4 Engineer, the holder of any permit to appropriate the public water is
5 not proceeding in good faith and with reasonable diligence to
6 perfect the appropriation, the State Engineer shall require the
7 submission of such proof and evidence as may be necessary to show
8 a compliance with the law. If, in the judgment of the State Engineer,
9 the holder of a permit is not proceeding in good faith and with
10 reasonable diligence to perfect the appropriation, the State Engineer
11 shall cancel the permit, and advise the holder of its cancellation. The
12 failure to provide the proof and evidence required pursuant to this
13 subsection is prima facie evidence that the holder is not proceeding
14 in good faith and with reasonable diligence to perfect the
15 appropriation.

16 2. If any permit is cancelled under the provisions of this section
17 or NRS 533.390 or 533.410, the holder of the permit may within 60
18 days of the cancellation of the permit file a written petition with the
19 State Engineer requesting a review of the cancellation by the State
20 Engineer at a public hearing. The State Engineer may, after
21 receiving and considering evidence, affirm, modify or rescind the
22 cancellation.

23 3. If the decision of the State Engineer modifies or rescinds the
24 cancellation of a permit, the effective date of the appropriation
25 under the permit is vacated and replaced by the date of the filing of
26 the written petition with the State Engineer.

27 4. The cancellation of a permit may not be reviewed or be the
28 subject of any judicial proceedings unless a written petition for
29 review has been filed and the cancellation has been affirmed,
30 modified or rescinded pursuant to subsection 2.

31 5. For the purposes of this section, the measure of reasonable
32 diligence is the steady application of effort to perfect the
33 appropriation in a reasonably expedient and efficient manner under
34 all the facts and circumstances. When a project or integrated system
35 is comprised of several features, work on one feature of the project
36 or system may be considered in finding that reasonable diligence
37 has been shown in the development of water rights for all features of
38 the entire project or system.

39 6. The appropriation of water or the acquisition or lease of
40 appropriated water from any:

41 (a) Stream system as provided for in this chapter; or

42 (b) Underground water as provided for in NRS 534.080,

43 ↳ by a political subdivision of this State or a public utility, as
44 defined in NRS 704.020, to serve the present or the reasonably
45 anticipated future municipal, industrial or domestic needs of its



1 customers for water, as determined in accordance with a master plan
2 adopted pursuant to chapter 278 of NRS or a plan approved by the
3 State Engineer, must be considered when reviewing an extension of
4 time.

5 **Sec. 29.** NRS 533.410 is hereby amended to read as follows:

6 533.410 ~~##~~ *Except as otherwise provided in sections 16 and*
7 *17 of this act, if,* any holder of a permit from the State Engineer
8 fails, before the date set for filing in the permit or the date set by any
9 extension granted by the State Engineer, to file with the State
10 Engineer proof of application of water to beneficial use, and the
11 accompanying map, if a map is required, the State Engineer shall
12 advise the holder of the permit, by registered or certified mail, that
13 the permit is held for cancellation. If the holder, within 30 days after
14 the mailing of this notice, fails to file with the State Engineer the
15 required affidavit and map, if a map is required, or an application
16 for an extension of time to file the instruments, the State Engineer
17 shall cancel the permit. For good cause shown, upon application
18 made before the expiration of the 30-day period, the State Engineer
19 may grant an extension of time in which to file the instruments.

20 **Sec. 30.** NRS 533.435 is hereby amended to read as follows:

21 533.435 1. The State Engineer shall collect the following
22 fees:

- 23
- 24 For examining and filing an application for a
- 25 permit to appropriate water \$360.00
- 26 This fee includes the cost of publication,
- 27 which is \$50.
- 28 For reviewing a corrected application or map, or
- 29 both, in connection with an application for a
- 30 water right permit..... 100.00
- 31 For examining and acting upon plans and
- 32 specifications for construction of a dam..... 1,200.00
- 33 For examining and filing an application for each
- 34 permit to change the point of diversion,
- 35 manner of use or place of use of an existing
- 36 right 240.00
- 37 This fee includes the cost of publication,
- 38 which is \$50.
- 39 For examining and filing an application for a
- 40 temporary permit to change the point of
- 41 diversion, manner of use or place of use of an
- 42 existing right..... 180.00
- 43 *For examining and filing an application for an*
- 44 *allocation of conserved water..... 190.00*
- 45 *plus \$50 for publication.*



1	For issuing and recording each permit to	
2	appropriate water for any purpose, except for	
3	generating hydroelectric power which results	
4	in nonconsumptive use of the water, watering	
5	livestock or wildlife purposes	\$360.00
6	plus \$3 per acre-foot approved or fraction	
7	thereof.	
8	Except for generating hydroelectric power,	
9	watering livestock or wildlife purposes, for	
10	issuing and recording each permit to change	
11	an existing water right whether temporary or	
12	permanent for any purpose	300.00
13	plus \$3 per acre-foot approved or fraction	
14	thereof.	
15	For issuing and recording each permit for	
16	additional rate of diversion from a well where	
17	no additional volume of water is granted	1,000.00
18	For issuing and recording each permit to change	
19	the point of diversion or place of use of an	
20	existing right whether temporary or	
21	permanent for irrigation purposes, a	
22	maximum fee of	750.00
23	For issuing and recording each permit to	
24	appropriate or change the point of diversion	
25	or place of use of an existing right whether	
26	temporary or permanent for watering	
27	livestock or wildlife purposes	240.00
28	plus \$50 for each cubic foot of water per	
29	second approved or fraction thereof.	
30	For issuing and recording each permit to	
31	appropriate or change an existing right	
32	whether temporary or permanent for water	
33	for generating hydroelectric power which	
34	results in nonconsumptive use of the water.....	480.00
35	plus \$50 for each cubic foot per second of	
36	water approved or fraction thereof.	
37	For filing and examining a request for a waiver	
38	in connection with an application to drill a	
39	well.....	120.00
40	For filing and examining a notice of intent to	
41	drill a well	25.00
42	For filing and examining an affidavit to	
43	relinquish water rights in favor of use of	
44	water for domestic wells	300.00



1	For filing a secondary application under a	
2	reservoir permit	\$300.00
3	For approving and recording a secondary permit	
4	under a reservoir permit	540.00
5	For reviewing each tentative subdivision map	180.00
6	plus \$1 per lot.	
7	For reviewing and approving each final	
8	subdivision map	120.00
9	For storage approved under a dam permit for	
10	privately owned nonagricultural dams which	
11	store more than 50 acre-feet	480.00
12	plus \$1.25 per acre-foot storage capacity.	
13	This fee includes the cost of inspection	
14	and must be paid annually.	
15	For flood control detention basins	480.00
16	plus \$1.25 per acre-foot storage capacity.	
17	This fee includes the cost of inspection	
18	and must be paid annually.	
19	For filing proof of completion of work	60.00
20	For filing proof of beneficial use	60.00
21	For issuing and recording a certificate upon	
22	approval of the proof of beneficial use	350.00
23	For filing proof of resumption of a water right	360.00
24	For filing any protest	30.00
25	For filing any application for extension of time	
26	within which to file proofs, of completion or	
27	beneficial use, for each year for which the	
28	extension of time is sought	120.00
29	For filing any application for extension of time	
30	to prevent a forfeiture, for each year for	
31	which the extension of time is sought	120.00
32	For reviewing a cancellation of a water right	
33	pursuant to a petition for review	360.00
34	For examining and filing a report of conveyance	
35	filed pursuant to paragraph (a) of subsection	
36	1 of NRS 533.384	120.00
37	plus \$20 per conveyance document.	
38	For filing any other instrument	10.00
39	For making a copy of any document recorded or	
40	filed in the Office of the State Engineer, for	
41	the first page	1.00
42	For each additional page20
43	For certifying to copies of documents, records or	
44	maps, for each certificate	6.00
45	For each copy of any full size drawing or map	6.00



1 For each color copy of any full size drawing or
 2 map (2' x 3') \$12.00
 3 For colored mylar plots 10.00
 4

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

8 3. Except as otherwise provided in this subsection, all fees
 9 collected by the State Engineer under the provisions of this section
 10 must be deposited in the State Treasury for credit to the State
 11 General Fund. All fees received for copies of any drawing or map
 12 must be kept by the State Engineer and used only to pay the costs of
 13 printing, replacement and maintenance of printing equipment. Any
 14 publication fees received which are not used by the State Engineer
 15 for publication expenses must be returned to the persons who paid
 16 the fees. If, after exercising due diligence, the State Engineer is
 17 unable to make the refunds, the State Engineer shall deposit the fees
 18 in the State Treasury for credit to the State General Fund.

19 **Sec. 31.** NRS 533.450 is hereby amended to read as follows:

20 533.450 1. Except as otherwise provided in NRS 533.353,
 21 any person feeling aggrieved by any order or decision of the State
 22 Engineer, acting in person or through the assistants of the State
 23 Engineer or the water commissioner, affecting the person's interests,
 24 when the order or decision relates to the administration of
 25 determined rights or is made pursuant to NRS 533.270 to 533.445,
 26 inclusive, *and sections 2 to 18, inclusive, of this act*, or NRS
 27 533.481, 534.193, 535.200 or 536.200, may have the same reviewed
 28 by a proceeding for that purpose, insofar as may be in the nature of
 29 an appeal, which must be initiated in the proper court of the county
 30 in which the matters affected or a portion thereof are situated, but on
 31 stream systems where a decree of court has been entered, the action
 32 must be initiated in the court that entered the decree. The order or
 33 decision of the State Engineer remains in full force and effect unless
 34 proceedings to review the same are commenced in the proper court
 35 within 30 days after the rendition of the order or decision in
 36 question and notice thereof is given to the State Engineer as
 37 provided in subsection 3.

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

41 3. No such proceedings may be entertained unless notice
 42 thereof, containing a statement of the substance of the order or
 43 decision complained of, and of the manner in which the same
 44 injuriously affects the petitioner's interests, has been served upon
 45 the State Engineer, personally or by registered or certified mail, at



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

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

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

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

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

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

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

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

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

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

43 9. Appeals may be taken to the appellate court of competent
44 jurisdiction pursuant to the rules fixed by the Supreme Court
45 pursuant to Section 4 of Article 6 of the Nevada Constitution from



1 the judgment of the district court in the same manner as in other
2 civil cases.

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

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

10 **Sec. 32.** Chapter 534 of NRS is hereby amended by adding
11 thereto the provisions set forth as sections 33 and 34 of this act.

12 **Sec. 33. 1. *The Account for Purchasing and Retiring Water***
13 ***Rights is hereby created in the State General Fund.***

14 **2. *The State Engineer shall administer the Account and may***
15 ***apply for and accept any gift, grant, donation, bequest or other***
16 ***source of money for deposit in the Account.***

17 **3. *The money in the Account must only be used to purchase***
18 ***water rights pursuant to section 34 of this act.***

19 **4. *The interest and income earned on the money in the***
20 ***Account, after deducting any applicable charges, must be credited***
21 ***to the Account.***

22 **5. *Any money remaining in the Account at the end of a fiscal***
23 ***year does not revert to the State General Fund, and the balance in***
24 ***the Account must be carried forward to the next fiscal year.***

25 **6. *The State Engineer may request an allocation by the***
26 ***Interim Finance Committee from the Contingency Account***
27 ***pursuant to NRS 353.266, 353.268 and 353.269 if:***

28 ***(a) The balance in the Account is less than \$250,000; or***

29 ***(b) The balance in the Account is not sufficient to purchase***
30 ***water rights pursuant to section 34 of this act.***

31 **Sec. 34. 1. *The Purchasing and Retiring Water Rights***
32 ***Program is hereby established for the purpose of purchasing and***
33 ***retiring water rights in groundwater basins where there is an***
34 ***insufficient supply of water available to serve all vested rights,***
35 ***claims of vested rights, permits, certificates and protectable***
36 ***interests in domestic wells in the basin.***

37 **2. *The Program must be administered by the State Engineer.***
38 ***In administering the Program, the State Engineer shall, to the***
39 ***extent money is available in the Account for Purchasing and***
40 ***Retiring Water Rights created by section 33 of this act, purchase***
41 ***and retire water rights from persons willing to sell according to***
42 ***the following priority:***

43 ***(a) Groundwater basins where the water rights exceed the***
44 ***available water supply by 200 percent or more and where pumping***



1 *has exceeded the available water supply in the preceding 5 years is*
2 *the first priority.*

3 *(b) Groundwater basins where groundwater withdrawals have*
4 *exceeded the available supply of water in the previous 5 years is*
5 *the second priority.*

6 *(c) Groundwater basins where the water rights exceed the*
7 *available supply of water by 200 percent or more is the third*
8 *priority.*


9 *(d) Groundwater basins where the water rights exceed the*
10 *available water supply by 150 percent or more is the fourth*
11 *priority.*

12 *(e) Groundwater basins where the water rights exceed the*
13 *available water supply by 100 percent or more is the fifth priority.*

14 **3. The State Engineer shall purchase a water right based**
15 **upon the fair market value of the water right at the time of**
16 **purchase.**

17 **4. The State Engineer shall retire all water rights purchased**
18 **pursuant to this section and withdraw that groundwater from**
19 **appropriation. Groundwater that has been withdrawn pursuant to**
20 **this section is not available for any use.**

21 **Sec. 35.** NRS 534.090 is hereby amended to read as follows:

22 534.090 1. Except as otherwise provided in this section 
23 **and sections 14 and 17 of this act**, failure for 5 successive years
24 after April 15, 1967, on the part of the holder of any right, whether it
25 is an adjudicated right, an unadjudicated right or a right for which a
26 certificate has been issued pursuant to NRS 533.425, and further
27 whether the right is initiated after or before March 25, 1939, to use
28 beneficially all or any part of the underground water for the purpose
29 for which the right is acquired or claimed, works a forfeiture of both
30 undetermined rights and determined rights to the use of that water to
31 the extent of the nonuse.

32 2. If the records of the State Engineer or any other documents
33 obtained by or provided to the State Engineer indicate 4 or more
34 consecutive years of nonuse of all or any part of a water right which
35 is governed by this chapter:

36 (a) The State Engineer shall notify the owner of the water right,
37 as determined in the records of the Office of the State Engineer, by
38 registered or certified mail of the nonuse and that the owner has 1
39 year after the date of the notice of nonuse in which to use the water
40 right beneficially and to provide proof of such use to the State
41 Engineer or apply for relief pursuant to subsection 3 to avoid
42 forfeiting the water right.

43 (b) If, after 1 year after the date of the notice of nonuse pursuant
44 to paragraph (a), proof of resumption of beneficial use is not filed in
45 the Office of the State Engineer, the State Engineer shall, unless the



1 State Engineer has granted a request to extend the time necessary to
2 work a forfeiture of the water right, send a final notice to the owner
3 of the water right, as determined in the records of the Office of the
4 State Engineer, by registered or certified mail, that the water right is
5 held for forfeiture. If the owner of the water right, within 30 days
6 after the date of such final notice, fails to file the required proof of
7 resumption of beneficial use or an application for an extension of
8 time to prevent forfeiture, the State Engineer shall declare the right,
9 or the portion of the right not returned to beneficial use, forfeited.
10 The State Engineer shall send notice of the declaration of forfeiture,
11 by registered or certified mail, to the owner of record, as determined
12 in the records of the Office of the State Engineer, of the water right
13 that has been declared forfeited.

14 (c) If, after receipt of a notice of the declaration of forfeiture
15 pursuant to paragraph (b), the owner of record of the water right
16 fails to appeal the ruling in the manner provided for in NRS
17 533.450, and within the time provided for therein, the forfeiture
18 becomes final. Upon the forfeiture of the water right, the water
19 reverts to the public and is available for further appropriation,
20 subject to existing rights.

21 3. The State Engineer may, upon the request of the holder of
22 any right described in subsection 1, extend the time necessary to
23 work a forfeiture under subsection 2 if the request is made before
24 the expiration of the time necessary to work a forfeiture. Except as
25 otherwise provided in subsection 4, the State Engineer may grant,
26 upon request and for good cause shown, any number of extensions,
27 but a single extension must not exceed 1 year. In determining
28 whether to grant or deny a request, the State Engineer shall, among
29 other reasons, consider:

30 (a) Whether the holder has submitted proof and evidence that
31 the holder is proceeding in good faith and with reasonable diligence
32 to resume use of the water beneficially for the purpose for which the
33 holder's right is acquired or claimed;

34 (b) The number of years during which the water has not been
35 put to the beneficial use for which the right is acquired or claimed;

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

38 (d) Whether the water right is located in a basin within a county
39 under a declaration of drought by the Governor, United States
40 Secretary of Agriculture or the President of the United States;

41 (e) Whether the holder has demonstrated efforts to conserve
42 water which have resulted in a reduction in water consumption;

43 (f) Whether the water right is located in a basin that has been
44 designated as a critical management area by the State Engineer
45 pursuant to subsection 7 of NRS 534.110;



1 (g) The date of priority of the water right as it relates to the
2 potential curtailment of water use in the basin;

3 (h) The availability of water in the basin, including, without
4 limitation, whether withdrawals of water consistently exceed the
5 perennial yield of the basin; and

6 (i) Any orders restricting use or appropriation of water in the
7 basin.

8 ↪ The State Engineer shall notify, by registered or certified mail,
9 the owner of the water right, as determined in the records of the
10 Office of the State Engineer, of whether the State Engineer has
11 granted or denied the holder's request for an extension pursuant to
12 this subsection. If the State Engineer grants an extension pursuant to
13 this subsection and, before the expiration of that extension, proof of
14 resumption of beneficial use or another request for an extension is
15 not filed in the Office of the State Engineer, the State Engineer shall
16 send a final notice to the owner of the water right, by registered or
17 certified mail, that the water right will be declared forfeited if the
18 owner of the water right fails to file the required proof of
19 resumption of beneficial use or an application for an extension of
20 time to prevent forfeiture within 30 days after the date of the final
21 notice. If the owner of the water right fails to file the required proof
22 of resumption of beneficial use or an application for an extension of
23 time to prevent forfeiture within 30 days after the date of such final
24 notice, the State Engineer shall declare the water right, or the
25 portion of the right not returned to beneficial use, forfeited.

26 4. If the State Engineer grants an extension pursuant to
27 subsection ~~H~~ 2 or 3 in a basin:

28 (a) Where withdrawals of groundwater consistently exceed the
29 perennial yield of the basin; or

30 (b) That has been designated as a critical management area by
31 the State Engineer pursuant to subsection 7 of NRS 534.110,

32 ↪ a single extension must not exceed 3 years, but any number of
33 extensions may be granted to the holder of such a right.

34 5. The failure to receive a notice pursuant to subsection 2 or 3
35 does not nullify the forfeiture or extend the time necessary to work
36 the forfeiture of a water right.

37 6. ~~A~~ *Except as otherwise provided in sections 2 to 18,*
38 *inclusive, of this act, a* right to use underground water whether it is
39 vested or otherwise may be lost by abandonment. If the State
40 Engineer, in investigating a groundwater source, upon which there
41 has been a prior right, for the purpose of acting upon an application
42 to appropriate water from the same source, is of the belief from his
43 or her examination that an abandonment has taken place, the State
44 Engineer shall so state in the ruling approving the application. If,
45 upon notice by registered or certified mail to the owner of record



1 who had the prior right, the owner of record of the prior right fails to
2 appeal the ruling in the manner provided for in NRS 533.450, and
3 within the time provided for therein, the alleged abandonment
4 declaration as set forth by the State Engineer becomes final.

5 **Sec. 36.** 1. This section becomes effective upon passage and
6 approval.

7 2. Sections 1 to 35, inclusive, of this act become effective:

8 (a) Upon passage and approval for the purpose of adopting any
9 regulations and performing any other preparatory administrative
10 tasks that are necessary to carry out the provisions of this act; and

11 (b) On July 1, 2021, for all other purposes.

