

SB 36 Amendment

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Purpose of Amendment: Address concerns heard from others on SB 36 as originally drafted and applies alternative language in AB 104 that is appropriate for SB 36. Section 1 change is for conforming to appropriate section number. Sections 2 and 3 duplicate language in new Section 6. Clarification is made in Section 4 that groundwater rights can be donated and all retired water rights remain retired in the State Engineer's records. Section 5 places the provisions of the program in Chapter 232 of NRS. Section 6 is replaced with new Sections 6, 6.5, and 6.6 that clarify the purposes of the groundwater rights retirement program, establish the Account for Retiring Water Rights, and establish the Nevada Voluntary Water Rights Retirement Program. Sections 7 and 12 remove the Advisory Committee from the bill. Section 8 is not necessary with amended language in Section 4. Section 9 is deleted to remove the regulations from the bill. Section 10 has been moved to Section 6. Section 11 is conforming language. New Sections 12.5 and 12.6 enable groundwater rights retirement to be included in the grant program in NRS 349.981. Section 13 is deleted to remove the regulation requirement from the bill.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

Sec. 1. NRS 533.030 is hereby amended to read as follows:

533.030 1. Subject to existing rights, and except as otherwise provided in this section and NRS 533.0241, 533.027, and 533.028, *and section ~~6~~ 4 of this act*, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.

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

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

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

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

(a) The board of county commissioners may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any artificially created lake or stream located within the unincorporated areas of the county.

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

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

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

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

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

Sec. 2. NRS 533.370 is hereby amended to read as follows:

533.370 1. Except as otherwise provided in this section and NRS 533.0241, 533.345, 533.371, 533.372 and 533.503, *and section ~~46~~ 4 of this act*, the State Engineer shall approve an application submitted in proper form which contemplates the application of water to beneficial use if:

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

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

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

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

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

2. Except as otherwise provided in subsection 10, ~~[where there]~~ *the State Engineer shall reject an application and refuse to issue the requested permit if:*

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

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

(c) ~~The groundwater rights have been retired pursuant to section 4 of this act; or [where its]~~

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

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

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

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

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

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

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

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

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

- (a) Upon written authorization to do so by the applicant.
 - (b) If an application is protested.
 - (c) If the purpose for which the application was made is municipal use.
 - (d) In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368.
 - (e) Where court actions or adjudications are pending, which may affect the outcome of the application.
 - (f) In areas in which adjudication of vested water rights is deemed necessary by the State Engineer.
 - (g) On an application for a permit to change a vested water right in a basin where vested water rights have not been adjudicated.
 - (h) Where authorized entry to any land needed to use the water for which the application is submitted is required from a governmental agency.
 - (i) On an application for which the State Engineer has required additional information pursuant to NRS 533.375.
5. If the State Engineer does not act upon an application in accordance with subsections 4 and 6, the application remains active until approved or rejected by the State Engineer.
6. Except as otherwise provided in this subsection and subsection 10, the State Engineer shall approve or reject, within 6 months after the final date for filing a protest, an application filed to change the point of diversion of water already appropriated when the existing and proposed points of diversion are on the same property for which the water has already been appropriated under the existing water right or the proposed point of diversion is on real property that is proven to be owned by the applicant and is contiguous to the place of use of the existing water right. The State Engineer may postpone action on the application pursuant to subsection 4.
7. If the State Engineer has not approved, rejected or held a hearing on an application within 7 years after the final date for filing a protest, the State Engineer shall cause notice of the application to be republished and reposted pursuant to NRS 533.360 immediately preceding the time at which the State Engineer is ready to approve or reject the application. The cost of the republication must be paid by the applicant. After such republication and reposting, a protest may be filed in accordance with NRS 533.365.

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

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

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

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

12. As used in this section, “domestic well” has the meaning ascribed to it in NRS 534.350.

Sec. 3. Deleted by amendment.

Sec. 4. Chapter 534 of NRS is hereby amended by adding hereto ~~[the provisions set forth as sections 5 to 9, inclusive, of this act.]~~ a new section to read as follows:

1. The State Engineer shall retire all water rights purchased by or donated to the Nevada Voluntary Water Rights Retirement Program pursuant to section 6.6 of this act using any appropriate mechanism, as determined by the State Engineer, and preclude that groundwater from appropriation. Any groundwater right that has been retired pursuant to this section is not available for any use and shall be deemed to be retired from the source in perpetuity.

2. The State Engineer shall not accept new applications to retire water rights unless accepted by the Director on or before June 30, 2035.

Sec. 5. ~~[As used in sections 6 to 9, inclusive, of this act, unless the context otherwise requires:~~

~~1. "Department" means the State Department of Conservation and Natural Resources.~~

~~2. "Director" means the Director of the Department.~~

~~3. "Nevada Conservation and Recreation Program" or "Program" means the Nevada Conservation and Recreation Program created by section 10 of this act.]~~

Chapter 232 of NRS is hereby amended by adding thereto the provisions as set forth as sections 6 to 9, inclusive, of this act.

Sec. 6. Deleted by amendment.

Add new Section 6

Sec. 6. 1. The Nevada Conservation and Recreation Program is hereby created within the Department to protect, preserve and obtain the benefits of the property and natural and cultural resources of this State. The Director shall administer the Program.

2. The Nevada Conservation and Recreation Program consists of:

(a) A grant program to make grants in accordance with subsections 8, 9 and 10 of section 2 of chapter 480, Statutes of Nevada 2019, at page 2861; and

(b) The Nevada Voluntary Water Rights Retirement Program established by section 6.6 of this act.

3. The Director may adopt regulations to carry out the provisions of this section.

Add new sections 6.5 and 6.6

Sec. 6.5 1. The Account for Retiring Water Rights is hereby created in the State General Fund.

2. The Account for Retiring Water Rights must be administered by the Director in accordance with the Nevada Voluntary Water Rights Retirement Program established by section 6.6 of this act. In addition to any direct legislative appropriation, the Director may apply for and accept any gift, donation, bequest, grant, federal money or other source of money for deposit in the Account for Retiring Water Rights.

3. The money in the Account for Retiring Water Rights must only be used for administering the Nevada Voluntary Water Rights Retirement Program established by section 6.6 of this act, to purchase water rights for retirement pursuant to section 6.6 of this act and to provide matching money that would result in the retirement of water rights pursuant to sections 4 and 6.6 of this act.

4. The money in the Account for Retiring Water Rights or any portion of the money in the Account for Retiring Water Rights may be invested or reinvested in accordance with the provisions of chapter 355 of NRS. The proceeds of such investments and the interest and income earned on the money in the Account for Retiring Water Rights, after deducting any applicable charges, must be credited to the Account for Retiring Water Rights.

5. Any money remaining in the Account for Retiring Water Rights at the end of a fiscal year does not revert to the State General Fund, and the balance in the Account for Retiring Water Rights must be carried forward to the next fiscal year.

6. The Director may enter into an agreement with a public or private entity to apply for, obtain or manage any money contributed to the Account for Retiring Water Rights.

Sec. 6.6. 1. The Nevada Voluntary Water Rights Retirement Program is hereby established in the Nevada Conservation and Recreation Program created by section 6 of this act to accept donations for the retirement of water rights or purchase and retire water rights from willing sellers in order to:

(a) Protect the natural resources of this State;
(b) Address declining groundwater levels; or
(c) Address conflicts with existing rights or with protectable interests in existing domestic wells.

2. The Nevada Voluntary Water Rights Retirement Program must be administered by the Director. In administering the Program, the Director shall, to the extent money is available in the Account for Retiring Water Rights created by section 6.5 of this act, identify and purchase water rights for retirement by the State Engineer pursuant to section 4 of this act from persons willing to retire those water rights in target areas within any groundwater basins where:

(a) An order from the State Engineer precludes the issuance of new appropriations;
or

(b) The retirement of water rights meets the purposes set forth in subsection 1.
⇒ The Director shall document in writing the purpose for each water right retirement and cause that document to be included in the files of the State Engineer.

3. When sufficient money is available in the Account for Retiring Water Rights created by section 6.5 of this act, the Director may accept applications for the purchase and retirement of water rights in accordance with the regulations adopted by the Director pursuant to section 9 of this act.

4. The Director may not accept any donations of water rights for retirement or applications for the purchase and retirement of water rights after June 30, 2035.

Sec. 7. Deleted by amendment.

Sec. 8. Deleted by amendment.

Sec. 9. Deleted by amendment.

Sec. 10. Deleted by amendment.

Sec. 11. NRS 232.010 is hereby amended to read as follows:

232.010 As used in NRS 232.010 to 232.12 inclusive ~~[+]~~, ~~and section 10~~ sections 6 to 6.6, inclusive, of this act:

1. “Department” means the State Department of Conservation and Natural Resources.
2. “Director” means the Director of the State Department of Conservation and Natural Resources.

Sec. 12. NRS 232.090 is hereby amended to read as follows:

232.010 1. The Department consists of the Director and the following:

- (a) The Division of Water Resources
- (b) The Division of State Lands
- (c) The Division of Forestry
- (d) The Division of State Parks
- (e) The Division of Environmental Protection
- (f) The Office of Historic Preservation
- (g) The Division of Outdoor Recreation
- (h) The Division of Natural Heritage
- (i) Such other divisions as the Director may from time to time establish.

2. The State Environmental Commission, the State Conservation Commission, the Commission for Cultural Centers and Historic Preservation, the Commission on Off-Highway Vehicles, the Conservation Districts Program, the Sagebrush Ecosystem Council, the Nevada Conservation and Recreation Program, ~~the Advisory Committee for the Nevada Water Buy-back Initiative~~ and the Board to Review Claims are within the Department.

Add new sections:

Sec. 12.5 NRS 349.981 is hereby amended to read as follows:

349.981 1. There is hereby established a program to provide grants of money to:

(a) A purveyor of water to pay for costs of capital improvements to publicly owned community water systems and publicly owned nontransient water systems required or made necessary by the State Environmental Commission pursuant to NRS 445A.800 to 445A.955, inclusive, or made necessary by the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and the regulations adopted pursuant thereto.

(b) An eligible recipient to pay for the cost of improvements to conserve water, including, without limitation:

(1) Piping or lining of an irrigation canal;

(2) ~~[Recovery]~~ **Recovering** or recycling ~~[of]~~ wastewater or tailwater;

(3) Scheduling of irrigation;

(4) ~~[Measurement]~~ **Measuring** or metering ~~[of]~~ the use of water;

(5) Improving the efficiency of irrigation operations; ~~[and]~~

(6) Improving the efficiency of the operation of a facility for the storage of water, including, without limitation, efficiency in diverting water to such a facility ~~[;]~~ **; and**

(7) Permanently retiring groundwater rights pursuant to section 4 of this act to:

(I) Protect the natural resources of this State;

(II) Address declining groundwater levels; or

(III) Address conflicts with existing rights or with protectable interests in existing domestic wells.

~~-(c)~~ An eligible recipient to pay the following costs associated with connecting a domestic well or well with a temporary permit to a municipal water system, if the well was in existence on or before October 1, 1999, and the well is located in an area designated by the State Engineer pursuant to NRS 534.120 as an area where the groundwater basin is being depleted:

(1) Any local or regional fee for connection to the municipal water system.

(2) The cost of any capital improvement that is required to comply with a decision or regulation of the State Engineer.

(d) An eligible recipient to pay the following costs associated with abandoning an individual sewage disposal system and connecting the property formerly served by the abandoned individual sewage disposal system to a community sewage disposal system, if the Division of Environmental Protection requires the individual sewage disposal system to be abandoned and the property upon which the individual sewage disposal system was located to be connected to a community sewage disposal system pursuant to the provisions of NRS 445A.300 to 445A.730, inclusive, or any regulations adopted pursuant thereto:

(1) Any local or regional fee for connection to the community sewage disposal system.

(2) The cost of any capital improvement that is required to comply with a statute of this State or a decision, directive, order or regulation of the Division of Environmental Protection.

(e) An eligible recipient to pay the following costs associated with abandoning an individual sewage disposal system and connecting the property formerly served by the abandoned individual sewage disposal system to a community sewage disposal system, if the Division of Environmental Protection approves a program or project for the protection of groundwater quality developed by the State or a local government that provides for the abandonment of an individual sewage disposal system and the connection of the property upon which the individual sewage disposal system was located to a community sewage disposal system pursuant to the provisions of NRS 445A.300 to 445A.730, inclusive, or any regulations adopted pursuant thereto:

(1) Any local or regional fee for connection to the community sewage disposal system.

(2) The cost of any capital improvement that is required to comply with a statute of this State or a decision, directive, order or regulation of the Division of Environmental Protection.

(f) An eligible recipient to pay the following costs associated with plugging and abandoning a well and connecting the property formerly served by the well to a municipal water system, if the State Engineer requires the plugging of the well pursuant to subsection 3 of NRS

534.180 or if the quality of the water of the well fails to comply with the standards of the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and the regulations adopted pursuant thereto:

(1) Any local or regional fee for connection to the municipal water system.

(2) The cost of any capital improvement that is required for the water quality in the area where the well is located to comply with the standards of the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and the regulations adopted pursuant thereto.

(3) The cost of plugging and abandoning a well and connecting the property formerly served by the well to a municipal water system.

(g) A governing body to pay the costs associated with developing and maintaining a water resource plan.

2. Except as otherwise provided in NRS 349.983, the determination of who is to receive a grant is solely within the discretion of the Board.

3. For any construction work paid for in whole or in part by a grant provided pursuant to this section to a nonprofit association or nonprofit cooperative corporation that is an eligible recipient, the provisions of NRS 338.013 to 338.090, inclusive, apply to:

(a) Require the nonprofit association or nonprofit cooperative corporation to include in the contract for the construction work the contractual provisions and stipulations that are required to be included in a contract for a public work pursuant to those statutory provisions.

(b) Require the nonprofit association or nonprofit cooperative corporation to comply with those statutory provisions in the same manner as if it was a public body that had undertaken the project or had awarded the contract.

(c) Require the contractor who is awarded the contract for the construction work, or a subcontractor on the project, to comply with those statutory provisions in the same manner as if he or she was a contractor or subcontractor, as applicable, engaged on a public 6 work.

4. As used in this section:

(a) “Eligible recipient” means:

(1) A political subdivision of this State, including, without limitation, a city, county, unincorporated town, water authority, conservation district, irrigation district, water district or water conservancy district.

(2) A nonprofit association or nonprofit cooperative corporation that provides water service only to its members.

(b) “Governing body” has the meaning ascribed to it in NRS 278.015.

(c) “Water resource plan” means a water resource plan created pursuant to NRS 278.0228.

Sec. 12.6 **NRS 349.983 is hereby amended to read as follows:**

349.983 1. Grants may be made pursuant to paragraph (a) of subsection 1 of NRS 349.981 only for the Lincoln County Water District and those community and nontransient water systems that:

(a) Were in existence on January 1, 1995; and

(b) Are currently publicly owned.

2. In making its determination of which purveyors of water are to receive grants pursuant to paragraph (a) of subsection 1 of NRS 349.981, the Board shall give preference to those purveyors of water whose public water systems regularly serve fewer than 6,000 persons.

3. Each recipient of a grant pursuant to paragraph (a) of subsection 1 of NRS 349.981 shall provide an amount of money for the same purpose. The Board shall develop a scale to be used to determine that amount, but the recipient must not be required to provide an amount less than 15 percent or more than 75 percent of the total cost of the project for which the grant is awarded. The scale must be based upon the ~~average~~ median household income of the customers of the recipient, and provide adjustments for the demonstrated economic hardship of those customers, the existence of an imminent risk to public health and any other factor that the Board determines to be relevant.

Sec. 13. **Deleted by amendment.**