

SENATE BILL NO. 108—COMMITTEE ON NATURAL RESOURCES

(ON BEHALF OF LEGISLATIVE COMMITTEE ON PUBLIC LANDS)

FEBRUARY 4, 1999

Referred to Committee on Natural Resources

SUMMARY—Revises provisions governing interbasin transfers of water. (BDR 48-922)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

~

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

AN ACT relating to water; revising the circumstances under which the state engineer may reject an application for an interbasin transfer of ground water; requiring the state engineer to subordinate such an application to certain applications to appropriate ground water; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 533.360 is hereby amended to read as follows:
2
3 533.360 1. Except as otherwise provided in subsection 4, NRS
4 533.345 and subsection ~~13~~ 4 of NRS 533.370, ~~when~~ ***if*** an application is filed in
5 compliance with this chapter, the state engineer shall, within 30
6 days, publish or cause to be published once a week for 4 consecutive weeks in a
7 newspaper of general circulation and printed and published in
8 the county where the water is sought to be appropriated, a notice of the application,
9 which sets forth:
10 (a) That the application has been filed.
11 (b) The date of the filing.
12 (c) The name and address of the applicant.
13 (d) The name of the source from which the appropriation is to be made.
14 (e) The location of the place of diversion, described by legal subdivision or metes
15 and bounds and by a physical description of that
16 place of diversion.

1 (f) The purpose for which the water is to be appropriated.
2 The publisher shall add thereto the date of the first publication and the date of the
3 last publication.

4 2. Except as otherwise provided in subsection 4, proof of publication must be
5 filed within 30 days after the final day of publication. The state
6 engineer shall pay for the publication from the application fee. If the application is
7 canceled for any reason before publication, the state engineer
8 shall return to the applicant that portion of the application fee collected for
9 publication.

10 3. If the application is for a proposed well:

11 (a) In a county whose population is less than 400,000;

12 (b) For municipal, quasi-municipal or industrial use; and

13 (c) Whose reasonably expected rate of diversion is one-half cubic foot
14 per second or more,

15 the applicant shall mail a copy of the notice of application to each owner of
16 real property containing a domestic well that is within 2,500 feet of the proposed
17 well. ~~[, to his]~~ *The notice must be mailed to the* address *of the*
18 *owner* as shown in the latest records of the county assessor. If there are not more
19 than six ~~[such]~~ *of those* wells, notices must be sent to each owner by
20 certified mail, return receipt requested. If there are more than six ~~[such]~~ *of those*
21 wells, at least six notices must be sent to owners by certified mail,
22 return receipt requested. The return receipts from ~~[these]~~ *the* notices must be filed
23 with the state engineer before he may consider the application.

24 4. The provisions of this section do not apply to an environmental permit.

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

26 533.370 1. Except as otherwise provided in *this section and* NRS
27 533.345, 533.371, 533.372 and 533.503 , ~~[and this section,]~~ the state engineer shall
28 approve an application submitted in proper form which
29 contemplates the application of water to beneficial use if:

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

31 (b) The proposed use or change, if within an irrigation district, does not adversely
32 affect the cost of water for other holders of water rights in the
33 district or lessen the ~~[district's]~~ efficiency *of the district* in its delivery or use of
34 water; and

35 (c) The applicant provides proof satisfactory to the state engineer of:

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

38 (2) His financial ability and reasonable expectation actually to construct the work
39 and apply the water to the intended beneficial use with
40 reasonable diligence.

2. Except as otherwise provided in subsection ~~{5,}~~ 6, the state engineer shall ~~{either}~~ approve or reject each application within 1 year after the final date for ~~a~~ filing protest. However:

(a) Action ~~{can}~~ *may* be postponed by the state engineer upon written authorization to do so by the applicant or, ~~{in case of a protested application, by both}~~ *if an application is protested, by* the protestant and the applicant; and

(b) In areas where studies of water supplies are being made or where court actions are pending, the state engineer may withhold action until it is determined there is unappropriated water or the court action becomes final.

3. Except as otherwise provided in *this* subsection ~~{5, where there}~~ *and subsection 6, if action on an application for an interbasin transfer of ground water is postponed or withheld pursuant to subsection 2, and the application is not approved or rejected within 5 years after the final date for filing a protest to the application, the application must be subordinated to each application to appropriate ground water from the basin of origin that is filed after the application. The provisions of this subsection do not apply to an application for an interbasin transfer of ground water for which action is withheld pursuant to paragraph (b) of subsection 2 because of a pending court action.*

4. *Except as otherwise provided in subsection 6, if an application specified in subsection 1 is submitted to the state engineer and:*

(a) *There* is no unappropriated water in the proposed source of supply ~~{, or where its}~~ ;

(b) *The* proposed use or change *set forth in the application* conflicts with existing rights ~~{}~~ or threatens to prove detrimental to the public interest ~~{}~~ ; or

(c) *The application is for an interbasin transfer of ground water and approval of the application would be inconsistent with the protection of the identified requirements for ground water for present and future development in the basin of origin,*

the state engineer shall reject the application and refuse to issue the requested permit. ~~{Where}~~ *If* a previous application for a similar use of water within the same basin has been rejected on ~~{these}~~ *those* grounds, the new application may be denied without publication. *In determining whether an application must be rejected pursuant to paragraph (c), the state engineer shall consider the economy, environment and quality of life in the basin of origin.*

~~{4,}~~ 5. 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

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

11 ~~{5-}~~ 6. The provisions of subsections 1 ~~{, 2 and 3}~~ **to 4, inclusive**, do not apply to
12 an application for an environmental permit.

13 ~~{6-}~~ 7. The provisions of subsection ~~{4}~~ 5 do not authorize the recipient of an
14 approved application to use any state land administered by the
15 division of state lands of the state department of conservation and natural resources
16 without the appropriate authorization for ~~{such a}~~ **that** use from
17 the state land registrar.

18 **8. As used in this section, "basin of origin" means a basin from**
19 **which ground water is proposed to be transferred to another basin.**

20 **Sec. 3.** NRS 538.171 is hereby amended to read as follows:

21 538.171 1. The commission shall receive, protect and safeguard and hold in
22 trust for the State of Nevada all water and water rights, and all
23 other rights, interests or benefits in and to the waters described in NRS 538.041 to
24 538.251, inclusive, and to the power generated thereon, held by
25 or which may accrue to the State of Nevada ~~{under and by virtue of}~~ **pursuant to** any
26 Act of the Congress of the United States or any
27 agreements, compacts or treaties to which the State of Nevada may become a party,
28 or otherwise.

29 2. Except as otherwise provided in this subsection, applications for the original
30 appropriation of ~~{such}~~ **those** waters, or to change the place of
31 diversion, manner of use or place of use of water covered by the original
32 appropriation, must be made to the commission in accordance with the
33 regulations of the commission. In considering ~~{such an}~~ **the** application, the
34 commission shall use the criteria set forth in ~~{subsection 3}~~ **paragraphs**
35 **(a) and (b) of subsection 4** of NRS 533.370. The commission's action on the
36 application constitutes the recommendation of the State of Nevada to
37 the United States for the purposes of any federal action on the matter required by
38 law. The provisions of this subsection do not apply to
39 supplemental water.

40 3. The commission shall furnish to the state engineer a copy of all
41 agreements entered into by the commission concerning the original appropriation
42 and use of ~~{such waters. It}~~ **those waters. The commission**
43 shall also furnish to the state engineer any other information it possesses

1 relating to the use of water from the Colorado River which the state
2 engineer deems necessary to allow him to act on applications for permits for the
3 subsequent appropriation of ~~these~~ *those* waters after they fall
4 within the ~~{state-engineer's jurisdiction.}~~ *jurisdiction of the state engineer.*

5 4. Notwithstanding any provision of chapter 533 of NRS, any original
6 appropriation and use of the waters described in subsection 1 by the
7 commission or by any entity to whom or with whom the commission has
8 contracted the water is not subject to regulation by the state engineer.

~