

Senate Bill No. 159—Committee on Natural Resources

CHAPTER.....

AN ACT relating to water; extending to all counties the recognition of the importance of domestic wells as appurtenances to private homes and the creation of a protectible interest in such wells; extending to all counties the requirement for a copy of the notice of application for certain proposed wells to be mailed to certain owners of real property containing domestic wells; requiring the state engineer to reject certain applications to apply water to a beneficial use if the proposed use or change conflicts with protectible interests in existing domestic wells; revising certain provisions governing permits for wells and temporary permits 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:

Section 1. NRS 533.024 is hereby amended to read as follows:

533.024 The legislature declares that it is the policy of this state:

1. To encourage and promote the use of effluent, where that use is not contrary to the public health, safety or welfare, and where that use does not interfere with federal obligations to deliver water of the Colorado River.

2. ~~In a county whose population is less than 400,000, to~~ **To** recognize the importance of domestic wells as appurtenances to private homes, to create a protectible interest in such wells and to protect their supply of water from unreasonable adverse effects *which are* caused by municipal, quasi-municipal or industrial uses ~~to~~ *and which cannot reasonably be mitigated.*

Sec. 2. NRS 533.360 is hereby amended to read as follows:

533.360 1. Except as otherwise provided in subsection 4, NRS 533.345 and subsection 3 of NRS 533.370, when an application is filed in compliance with this chapter, the state engineer shall, within 30 days, publish or cause to be published once a week for 4 consecutive weeks in a newspaper of general circulation and printed and published in the county where the water is sought to be appropriated, a notice of the application, which sets forth:

- (a) That the application has been filed.
 - (b) The date of the filing.
 - (c) The name and address of the applicant.
 - (d) The name of the source from which the appropriation is to be made.
 - (e) The location of the place of diversion, described by legal subdivision or metes and bounds and by a physical description of that place of diversion.
 - (f) The purpose for which the water is to be appropriated.
- The publisher shall add thereto the date of the first publication and the date of the last publication.

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

3. If the application is for a proposed well:

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

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

~~(e)~~ *(b)* Whose reasonably expected rate of diversion is one-half cubic foot per second or more, the applicant shall mail a copy of the notice of application to each owner of real property containing a domestic well that is within 2,500 feet of the proposed well, to his address as shown in the latest records of the county assessor. If there are not more than six such wells, notices must be sent to each owner by certified mail, return receipt requested. If there are more than six such wells, at least six notices must be sent to owners by certified mail, return receipt requested. The return receipts from these notices must be filed with the state engineer before he may consider the application.

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

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

533.370 1. Except as otherwise provided in this section and NRS 533.345, 533.371, 533.372 and 533.503, 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:

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

(2) His 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 6, the state engineer shall approve or reject each application within 1 year after the final date for filing a protest. However:

(a) Action may be postponed by the state engineer upon written authorization to do so by the applicant or, if an application is protested, by the protestant and the applicant; and

(b) In areas where studies of water supplies have been determined to be necessary by the state engineer pursuant to NRS 533.368 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 subsection 6, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights ~~H~~ *or with protectible 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 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.

4. In determining whether an application for an interbasin transfer of ground water 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.

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 copy of the original application, and a record 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 7, 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.

6. The provisions of subsections 1 to 4, inclusive, do not apply to an application for an environmental permit.

7. The provisions of subsection 5 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.

8. As used in this section, “interbasin transfer of ground water” means a transfer of ground water for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.

Sec. 4. NRS 534.110 is hereby amended to read as follows:

534.110 1. The state engineer shall administer this chapter and shall prescribe all necessary regulations within the terms of this chapter for its administration.

2. The state engineer may:

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

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

3. The state engineer shall determine whether there is unappropriated water in the area affected and may issue permits only if the determination is affirmative. The state engineer ~~shall~~ *may* require each applicant to whom a permit is issued for a well:

- (a) ~~In a county whose population is less than 400,000;~~
 - ~~(b)~~ For municipal, quasi-municipal or industrial use; and
 - ~~(c)~~ *(b)* Whose reasonably expected rate of diversion is one-half cubic foot per second or more,
- to report periodically to the state engineer concerning the effect of that well on other previously existing wells that are located within 2,500 feet of the well.

4. It is a condition of each appropriation of ground water acquired under this chapter that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion. In determining a reasonable lowering of the static water level in a particular area, the state engineer shall consider the economics of pumping water for the general type of crops growing and may also consider the effect of using water on the economy of the area in general.

5. This section does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as *any protectible interests in existing domestic wells as set forth in NRS 533.024* and the rights of holders of existing appropriations can be satisfied under such express conditions. At the time a permit is granted for a well:

- (a) ~~In a county whose population is less than 400,000;~~
 - ~~(b)~~ For municipal, quasi-municipal or industrial use; and
 - ~~(c)~~ *(b)* Whose reasonably expected rate of diversion is one-half cubic foot per second or more,
- the state engineer shall include as a condition of the permit that pumping water pursuant to the permit may be limited or prohibited to prevent any unreasonable adverse effects on an existing domestic well located within 2,500 feet of the well, unless the holder of the permit and the owner of the domestic well have agreed to alternative measures that mitigate those adverse affects.

6. The state engineer shall conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the ground water supply may not be adequate for the needs of all permittees and all vested-right claimants, and if his findings so indicate the state engineer may order that withdrawals be restricted to conform to priority rights.

7. In any basin or portion thereof in the state designated by the state engineer, the state engineer may restrict drilling of wells in any portion thereof if he determines that additional wells would cause an undue interference with existing wells. Any order or decision of the state engineer so restricting drilling of such wells may be reviewed by the district court of the county pursuant to NRS 533.450.

Sec. 5. NRS 534.120 is hereby amended to read as follows:

534.120 1. Within an area that has been designated by the state engineer, as provided for in this chapter, where, in his judgment, the ground water basin is being depleted, the state engineer in his administrative capacity is herewith empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved.

2. In the interest of public welfare, the state engineer is authorized and directed to designate preferred uses of water within the respective areas so designated by him and from which the ground water is being depleted, and in acting on applications to appropriate ground water he may designate such preferred uses in different categories with respect to the particular areas involved within the following limits:

(a) Domestic, municipal, quasi-municipal, industrial, irrigation, mining and stock-watering uses; and ~~any~~

(b) Any uses for which a county, city, town, public water district or public water company furnishes the water.

3. Except as otherwise provided in subsection 5, the state engineer may:

(a) Issue temporary permits to appropriate ground water which can be limited as to time and which may, except as limited by subsection 4, be revoked if and when water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water to the inhabitants thereof.

(b) Deny applications to appropriate ground water for any use in areas served by such an entity.

(c) Limit the depth of domestic wells.

(d) Prohibit the drilling of wells for domestic use, as defined in NRS 534.013 and 534.0175, in areas where water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water to the inhabitants thereof.

4. The state engineer may revoke a temporary permit issued pursuant to subsection 3 for residential use, and require a person to whom ground water was appropriated pursuant to the permit to obtain water from an entity such as a water district or a municipality engaged in furnishing water to the inhabitants of the designated area, only if:

(a) The distance from the property line of any parcel served by a well pursuant to a temporary permit to the pipes and other appurtenances of the proposed source of water to which the property will be connected is not more than 180 feet;

(b) The well providing water pursuant to the temporary permit needs to be redrilled or have repairs made which require the use of a well-drilling rig; and

(c) The holder of the permit will be offered financial assistance to pay *at least 50 percent but* not more than 85 percent, as determined by the entity providing the financial assistance, of the cost of the local and regional connection fees and capital improvements necessary for making the connection to the proposed source of water.

In a basin that has a water authority that has a ground water management program, the state engineer shall not revoke the temporary permit unless

the water authority abandons and plugs the well and pays the costs related thereto. If there is not a water authority in the basin that has a ground water management program, the person shall abandon and plug his well in accordance with the rules of the state engineer.

5. The state engineer may, in an area in which he has issued temporary permits pursuant to subsection 3, limit the depth of a domestic well pursuant to paragraph (c) of subsection 3 or prohibit repairs from being made to a well, and may require the person proposing to deepen or repair the well to obtain water from an entity such as a water district or a municipality engaged in furnishing water to the inhabitants of the designated area, only if:

(a) The distance from the property line of any parcel served by the well to the pipes and other appurtenances of the proposed source of water to which the property will be connected is not more than 180 feet;

(b) The deepening or repair of the well would require the use of a well-drilling rig; and

(c) The person proposing to deepen or repair the well will be offered financial assistance to pay *at least 50 percent but* not more than 85 percent, as determined by the entity providing the financial assistance, of the cost of the local and regional connection fees and capital improvements necessary for making the connection to the proposed source of water.

In a basin that has a water authority that has a ground water management program, the state engineer shall not prohibit the deepening or repair of a well unless the water authority abandons and plugs the well and pays the costs related thereto. If there is not a water authority in the basin that has a ground water management program, the person shall abandon and plug his well in accordance with the rules of the state engineer.

6. For good and sufficient reasons, the state engineer may exempt the provisions of this section with respect to public housing authorities.

Sec. 6. 1. This act becomes effective on July 1, 2001.

2. Section 5 of this act expires by limitation on July 1, 2005.