

ASSEMBLY BILL NO. 331—ASSEMBLYWOMAN PIERCE

MARCH 21, 2005

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning authority of State Engineer to grant applications for water rights. (BDR 48-490)

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

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

AN ACT relating to water; providing expressly that the State Engineer shall reject an application for water rights for a speculative purpose; limiting the State Engineer to considering only the factors expressly included in statute in determining whether to grant applications for water rights; directing the State Engineer to consider any analysis of proposed interbasin transfers of ground water obtained from certain state agencies; 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. Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

The State Engineer shall reject an application for a permit to appropriate water if he determines that the application contemplates the application of water to a speculative purpose.

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

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

(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. *In determining whether to approve an application, the State Engineer shall consider only such factors as are expressly provided for in statute.* Except as otherwise provided in this subsection and subsection 7, the State Engineer shall approve or reject each application within 1 year after the final date for filing a protest. The State Engineer may:

(a) Postpone action upon written authorization to do so by the applicant or, if an application is protested, by the protestant and the applicant.

(b) Postpone action if the purpose for which the application was made is municipal use.

(c) 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, withhold action until it is determined there is unappropriated water or the court action becomes final.

3. If the State Engineer does not act upon an application within 1 year after the final date for filing a protest, the application remains active until acted upon by the State Engineer.

4. Except as otherwise provided in subsection 7, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights 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.

5. 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.~~ *analysis of the proposed interbasin transfer of ground water submitted to the State Engineer by:*

(1) The State Department of Agriculture;

(2) The Department of Wildlife;

(3) The Division of Environmental Protection of the State Department of Conservation and Natural Resources;

(4) The Division of Water Planning of the State Department of Conservation and Natural Resources; and

(5) The Division of Water Resources of the State Department of Conservation and Natural Resources.

6. 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 8, 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.

7. The provisions of subsections 1 to 5, inclusive, do not apply to an application for an environmental permit.

8. The provisions of subsection 6 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.

9. 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. 3. NRS 533.440 is hereby amended to read as follows:

533.440 1. All applications for reservoir permits shall be subject to the provisions of NRS 533.324 to 533.435, inclusive, *and section 1 of this act*, except those sections wherein proof of beneficial use is required to be filed. The person or persons proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for a permit, to be known herein as the secondary permit, in compliance with the provisions of NRS 533.324 to 533.435, inclusive, *and section 1 of this act*, except that no notice of such application shall be published.

2. The application shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owner of the reservoir for a permanent and sufficient interest in such reservoir to impound enough water for the purpose set forth in the application.

3. Effluent discharged from the point of the final treatment from within a sewage collection and treatment system shall be considered water as referred to in *this* chapter, ~~[533 of NRS.]~~ and shall be subject to appropriation for beneficial use under the reservoir-secondary permit procedure described in this section. Nothing in this section shall preclude appropriation in accordance with and subject to the provisions of NRS 533.324 to 533.435, inclusive ~~[,]~~ *and section 1 of this act*.

4. When beneficial use has been completed and perfected under the secondary permit, and after the holder thereof shall have made proofs of the commencement and completion of his work, and of the application of water to beneficial use, as in the case of other permits, as provided in this chapter, a final certificate of appropriation shall issue as other certificates are issued, except that the certificate shall refer to both the works described in the secondary permit and the reservoir described in the primary permit.

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

533.450 1. Any person feeling himself aggrieved by any order or decision of the State Engineer, acting in person or through his assistants or the water commissioner, affecting his interests, when such order or decision relates to the administration of determined rights or is made pursuant to NRS 533.270 to 533.445, inclusive, *and section 1 of this act*, may have the same reviewed by a proceeding for that purpose, insofar as may be in the nature of an appeal, which shall be initiated in the proper court of the county in which the matters affected or a portion thereof are situated; but on stream systems where a decree of court has been entered, the action shall be initiated in the court that entered the decree. Such order or



1 decision of the State Engineer shall be and remain in full force and
2 effect unless proceedings to review the same are commenced in the
3 proper court within 30 days following the rendition of the order or
4 decision in question and notice thereof is given to the State Engineer
5 as provided in subsection 3.

6 2. The proceedings in every case shall be heard by the court,
7 and shall be informal and summary, but full opportunity to be heard
8 shall be had before judgment is pronounced.

9 3. No such proceedings may be entertained unless notice
10 thereof, containing a statement of the substance of the order or
11 decision complained of, and of the manner in which the same
12 injuriously affects the petitioner's interests, has been served upon
13 the State Engineer, personally or by registered or certified mail, at
14 his office at the State Capital within 30 days following the rendition
15 of the order or decision in question. A similar notice shall also be
16 served personally or by registered or certified mail upon the person
17 or persons who may have been affected by such order or decision.

18 4. Where evidence has been filed with, or testimony taken
19 before, the State Engineer, a transcribed copy thereof, or of any
20 specific part of the same, duly certified as a true and correct
21 transcript in the manner provided by law, shall be received in
22 evidence with the same effect as if the reporter were present and
23 testified to the facts so certified. A copy of the transcript shall be
24 furnished on demand, at actual cost, to any person affected by such
25 order or decision, and to all other persons on payment of a
26 reasonable amount therefor, to be fixed by the State Engineer.

27 5. A bond shall not be required except when a stay is desired,
28 and the proceedings provided for in this section are not a stay
29 unless, within 5 days following the service of notice thereof, a bond
30 is filed in an amount to be fixed by the court, with sureties
31 satisfactory to such court, conditioned to perform the judgment
32 rendered in such proceedings.

33 6. Costs shall be paid as in civil cases brought in the district
34 court, except by the State Engineer or the State.

35 7. The practice in civil cases applies to the informal and
36 summary character of such proceedings, as provided in this section.

37 8. Appeals may be taken to the Supreme Court from the
38 judgment of the district court in the same manner as in other civil
39 cases.

40 9. The decision of the State Engineer shall be prima facie
41 correct, and the burden of proof shall be upon the party attacking the
42 same.

43 10. Whenever it appears to the State Engineer that any
44 litigation, whether now pending or hereafter brought, may adversely



1 affect the rights of the public in water, he shall request the Attorney
2 General to appear and protect the interests of the State.

3 **Sec. 5.** NRS 533.520 is hereby amended to read as follows:

4 533.520 1. Any person who files an application for a permit
5 to appropriate water from above or beneath the surface of the
6 ground for use outside this State, or to change the point of diversion
7 under an existing water right which has a place of use outside of this
8 State, or to change the place of use of water from a location in this
9 State to a location outside this State under an existing right, must
10 file an application with the State Engineer for a permit to do so
11 pursuant to provisions of NRS 533.324 to 533.450, inclusive, *and*
12 *section 1 of this act*, and chapter 534 of NRS.

13 2. The State Engineer may approve such an application if he
14 determines that the applicant's use of the water outside this State
15 complies with the requirements of NRS 533.324 to 533.450,
16 inclusive, *and section 1 of this act*, and those provisions of chapter
17 534 of NRS pertaining to the appropriation of water. In making his
18 determination, the State Engineer shall consider:

19 (a) The supply of water available in this State;

20 (b) The current and reasonably anticipated demands for water in
21 this State;

22 (c) The current or reasonably anticipated shortages of water in
23 this State;

24 (d) Whether the water that is the subject of the application could
25 feasibly be used to alleviate current or reasonably anticipated
26 shortages of water in this State;

27 (e) The supply and sources of water available to the applicant in
28 the state in which the applicant intends to use the water;

29 (f) The demands placed on the applicant's supply of water in the
30 state in which he intends to use the water; and

31 (g) Whether the request in the application is reasonable, taking
32 into consideration the factors set forth in paragraphs (a) to (f),
33 inclusive.

34 3. The State Engineer may, as a condition to the approval of
35 such an application, require the applicant to file a certificate from
36 the appropriate official in the state in which the water is to be used,
37 indicating to the satisfaction of the State Engineer that the intended
38 use of the water would be beneficial and that the appropriation is
39 feasible.

40 4. A person who is granted a permit pursuant to this section
41 shall comply with the laws and regulations of this State governing
42 the appropriation and use of water, as amended from time to time,
43 and any change in the point of diversion, manner of use or place of
44 use of water under a permit issued pursuant to this section is subject
45 to the requirements of this section.



1 5. The State Engineer may, as a condition of the approval of
2 any permit granted pursuant to this section, require that the use of
3 water in another state be subject to the same regulations and
4 restrictions that may be imposed upon the use of water in this State.

5 6. Upon submittal of an application under this section, the
6 applicant and, if the applicant is a natural person, his personal
7 representative, are subject to the jurisdiction of the courts of this
8 State and to service of process as provided in NRS 14.065.



