

SENATE BILL NO. 62—SENATOR RHOADS

FEBRUARY 16, 2005

Referred to Committee on Natural Resources

SUMMARY—Revises provisions governing appropriation of public waters. (BDR 48-681)

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 that approvals of certain applications by the State Engineer and certain permits and certificates issued by the State Engineer are void under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires the State Engineer to approve an application for a
2 temporary change in certain water rights if certain conditions are met, including a
3 determination that the proposed change does not adversely affect or impair the
4 water rights held by others. (NRS 533.345, 533.370, 533.371)

5 This bill provides that the State Engineer may only issue a permit if all of the
6 conditions for issuing a permit are met. This bill further provides that if the State
7 Engineer approves an application for a permit when all of the conditions have not
8 been met, the approval and any permit or certificate of appropriation based upon
9 the permit are void.

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

1 **Section 1.** NRS 533.345 is hereby amended to read as follows:
2 533.345 1. Every application for a permit to change the place
3 of diversion, manner of use or place of use of water already
4 appropriated must contain such information as may be necessary to
5 a full understanding of the proposed change, as may be required by
6 the State Engineer.



2. If an applicant is seeking a temporary change of place of diversion, manner of use or place of use of water already appropriated, the State Engineer shall approve the application *only* if:

- (a) The application is accompanied by the prescribed fees;
- (b) The temporary change is in the public interest; and
- (c) The temporary change does not impair the water rights held by other persons.

3. If the State Engineer determines that the temporary change may not be in the public interest, or may impair the water rights held by other persons, he shall give notice of the application as provided in NRS 533.360 and hold a hearing and render a decision as provided in this chapter.

4. A temporary change may be granted for any period not to exceed 1 year.

5. If the State Engineer approves an application for a temporary change in violation of paragraph (c) of subsection 2, the approval is void and any permit based upon the approval and any certificate of appropriation based upon the permit is also void.

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, 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 this subsection and subsection ~~7~~ 8, 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]~~ **8, where:**

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

(b) **The** proposed use or change conflicts with existing rights ~~for with]~~ ;

(c) **The proposed use or change conflicts with** protectible interests in existing domestic wells as set forth in NRS 533.024 ~~[, or threatens]~~ ; **or**

(d) **The proposed use or change 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. **If the State Engineer issues a requested permit in violation of paragraph (b) of subsection 4, the permit is void and any certificate of appropriation based upon the permit is also void.**

6. 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.



~~16-1~~ 7. 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 ~~18-1~~ 9, 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.

~~17-1~~ 8. The provisions of subsections 1 to ~~15-1~~ 6, inclusive, do not apply to an application for an environmental permit.

~~18-1~~ 9. The provisions of subsection ~~16-1~~ 7 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.

~~19-1~~ 10. 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 533.371 is hereby amended to read as follows:

533.371 1. The State Engineer shall reject the application and refuse to issue a permit to appropriate water for a specified period if he determines that:

~~11-1~~ (a) The application is incomplete;

~~12-1~~ (b) The prescribed fees have not been paid;

~~13-1~~ (c) The proposed use is not temporary;

~~14-1~~ (d) There is no water available from the proposed source of supply without exceeding the perennial yield or safe yield of that source;

~~15-1~~ (e) The proposed use conflicts with existing rights; or

~~16-1~~ (f) The proposed use threatens to prove detrimental to the public interest.

2. If the State Engineer issues a permit in violation of paragraph (e) of subsection 1, the permit is void and any certificate of appropriation based upon the permit is also void.



1 **Sec. 4.** This act becomes effective on July 1, 2005.

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