

SENATE BILL NO. 62—SENATOR RHOADS

FEBRUARY 16, 2005

Referred to Committee on Natural Resources

SUMMARY—Makes various changes concerning provisions governing water rights. (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; clarifying provisions governing the duties of the State Engineer concerning water rights; creating a fund to be used to protect existing water rights; revising the provisions concerning the approval or rejection of an application to change the point of diversion of water in certain circumstances; making an appropriation; 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 533.024 is hereby amended to read as follows:
- 2 533.024 The Legislature declares that ~~111~~ :
- 3 *1. It is the policy of this State:*
- 4 ~~111~~ (a) To encourage and promote the use of effluent, where
- 5 that use is not contrary to the public health, safety or welfare, and
- 6 where that use does not interfere with federal obligations to deliver
- 7 water of the Colorado River.
- 8 ~~121~~ (b) To recognize the importance of domestic wells as
- 9 appurtenances to private homes, to create a protectible interest in
- 10 such wells and to protect their supply of water from unreasonable
- 11 adverse effects which are caused by municipal, quasi-municipal or
- 12 industrial uses and which cannot reasonably be mitigated.
- 13 *2. The procedures in this chapter for changing the place of*
- 14 *diversion, manner of use or place of use of water, and for*
- 15 *confirming a report of conveyance, are not intended to have the*



*effect of quieting title to or changing ownership of a water right and that only a court of competent jurisdiction has the power to determine conflicting claims to ownership of a water right.*

**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 ~~4~~ 5 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 cancelled 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) For municipal, quasi-municipal or industrial use; and

(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 this subsection and ~~subsection 7,~~ *and subsections 3 and 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. Except as otherwise provided in subsection 8, 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:*

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



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

4. 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.]~~ 5. Except as otherwise provided in subsection ~~[7.]~~ 8, 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.]~~ 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.

~~[6.]~~ 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 ~~[8.]~~ 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



1 beneficial use and to perfect the proposed appropriation. If the  
2 application is rejected, the applicant may take no steps toward  
3 the prosecution of the proposed work or the diversion and use of the  
4 public water while the rejection continues in force.

5 ~~[7-]~~ 8. The provisions of subsections 1 to ~~[5-]~~ 6, inclusive, do  
6 not apply to an application for an environmental permit.

7 ~~[8-]~~ 9. The provisions of subsection ~~[6]~~ 7 do not authorize the  
8 recipient of an approved application to use any state land  
9 administered by the Division of State Lands of the State Department  
10 of Conservation and Natural Resources without the appropriate  
11 authorization for that use from the State Land Registrar.

12 ~~[9-]~~ 10. As used in this section, "interbasin transfer of ground  
13 water" means a transfer of ground water for which the proposed  
14 point of diversion is in a different basin than the proposed place of  
15 beneficial use.

16 **Sec. 4.** NRS 533.386 is hereby amended to read as follows:

17 533.386 1. The State Engineer shall confirm that the report of  
18 conveyance required by paragraph (a) of subsection 1 of NRS  
19 533.384 includes all material required by that subsection and that:

20 (a) The report is accompanied by the prescribed fee;

21 (b) No conflict exists in the chain of title that can be determined  
22 by the State Engineer from the conveyance documents or ~~[from]~~  
23 other information on file in the Office of the State Engineer; and

24 (c) The State Engineer is able to determine the rate of diversion  
25 and the amount of water conveyed in acre-feet or million gallons  
26 from the conveyance documents or ~~[from]~~ other information on file  
27 in the Office of the State Engineer.

28 2. If the State Engineer confirms a report of conveyance  
29 pursuant to subsection 1, he shall in a timely manner provide a  
30 notice of the confirmation to the person who submitted the report of  
31 conveyance. The notice must include, without limitation ~~[, a]~~:

32 (a) A statement indicating that neither the confirmation of the  
33 report of conveyance nor the report of conveyance, if the report sets  
34 forth the amount of water conveyed, guarantees that:

35 ~~[(a)]~~ (1) The water right is in good standing with the Office of  
36 the State Engineer; or

37 ~~[(b)]~~ (2) The amount of water referenced in the notice or in the  
38 report of conveyance is the actual amount of water that a person is  
39 entitled to use upon conveyance of the application or permit to  
40 appropriate any of the public waters, the certificate of appropriation,  
41 the adjudicated or unadjudicated water right, or the application or  
42 permit to change the place of diversion, manner of use or place of  
43 use of water.

44 (b) A statement that the confirmation of the report of  
45 conveyance is not a determination of ownership and that only a



1 *court of competent jurisdiction may adjudicate conflicting claims*  
2 *to ownership of a water right.*

3 3. If the State Engineer determines that the report of  
4 conveyance is deficient, he shall reject the report of conveyance and  
5 return it to the person who submitted it, *together* with:

6 (a) An explanation of the deficiency; and

7 (b) A notice stating that the State Engineer will not confirm a  
8 report of conveyance that has been rejected unless the report is  
9 resubmitted with the material required to cure the deficiency.  
10 The notice must also include a statement of the provisions of  
11 subsection ~~4.~~ 5.

12 4. *If, from the conveyance documents or other information in*  
13 *the Office of the State Engineer, it appears to the State Engineer*  
14 *that there is a conflict in the chain of title, the State Engineer shall*  
15 *reject the report of conveyance and return it to the person who*  
16 *submitted it, together with:*

17 (a) *An explanation that a conflict appears to exist in the chain*  
18 *of title; and*

19 (b) *A notice stating that the State Engineer will not take*  
20 *further action with respect to the report of conveyance until a*  
21 *court of competent jurisdiction has determined the conflicting*  
22 *claims to ownership of the water right and the determination has*  
23 *become final or until a final resolution of the conflicting claims*  
24 *has otherwise occurred. The notice must also include a statement*  
25 *of the provisions of subsection 5.*

26 5. The State Engineer shall not consider or treat the person to  
27 whom:

28 (a) An application or permit to appropriate any of the public  
29 waters;

30 (b) A certificate of appropriation;

31 (c) An adjudicated or unadjudicated water right; or

32 (d) An application or permit to change the place of diversion,  
33 manner of use or place of use of water,

34 ➔ is conveyed as the owner or holder of the application, right,  
35 certificate or permit for the purposes of this chapter, including,  
36 without limitation, all advisements and other notices required of the  
37 State Engineer and the granting of permits to change the place of  
38 diversion, manner of use or place of use of water, until a report of  
39 the conveyance is confirmed pursuant to subsection 1.

40 6. *If the State Engineer is notified that a court of competent*  
41 *jurisdiction has entered a judgment confirming ownership of a*  
42 *water right or resolving a conflict in a chain of title, and that the*  
43 *judgment has become final, the State Engineer shall take such*  
44 *administrative action as is appropriate or necessary to conform the*  
45 *records of the Office of the State Engineer with the judgment of*



1 *the court, including, without limitation, amending or withdrawing*  
2 *a permit or certificate that was previously approved by the State*  
3 *Engineer.*

4 **Sec. 5.** Chapter 534 of NRS is hereby amended by adding  
5 thereto a new section to read as follows:

6 *1. There is hereby created in the State Treasury a fund to be*  
7 *designated as the Water Rights Protection Fund to be*  
8 *administered by the Board for Financing Water Projects.*

9 *2. The Water Rights Protection Fund is a continuing fund*  
10 *without reversion. Money in the Fund must be invested as the*  
11 *money in other funds is invested. The interest and income earned*  
12 *on the money in the Fund, after deducting any applicable charges,*  
13 *must be credited to the Fund. Claims against the Fund must be*  
14 *paid as other claims against the State are paid.*

15 *3. The Board for Financing Water Projects may accept gifts,*  
16 *grants and donations from any source for deposit in the Water*  
17 *Rights Protection Fund.*

18 *4. Money in the Water Rights Protection Fund must be used*  
19 *by the Board for Financing Water Projects only to make grants to*  
20 *a local government to:*

21 *(a) Obtain and provide expert and technical assistance to*  
22 *protect its existing water rights; or*

23 *(b) Fund projects to enhance or protect its existing water*  
24 *rights.*

25 **Sec. 6.** NRS 538.171 is hereby amended to read as follows:

26 538.171 1. The Commission shall receive, protect and  
27 safeguard and hold in trust for the State of Nevada all water and  
28 water rights, and all other rights, interests or benefits in and to the  
29 waters described in NRS 538.041 to 538.251, inclusive, and to the  
30 power generated thereon, held by or which may accrue to the State  
31 of Nevada under and by virtue of any Act of the Congress of the  
32 United States or any agreements, compacts or treaties to which the  
33 State of Nevada may become a party, or otherwise.

34 2. Except as otherwise provided in this subsection, applications  
35 for the original appropriation of such waters, or to change the place  
36 of diversion, manner of use or place of use of water covered by the  
37 original appropriation, must be made to the Commission in  
38 accordance with the regulations of the Commission. In considering  
39 such an application, the Commission shall use the criteria set forth  
40 in subsection ~~4~~ 6 of NRS 533.370. The Commission's action on  
41 the application constitutes the recommendation of the State of  
42 Nevada to the United States for the purposes of any federal action  
43 on the matter required by law. The provisions of this subsection do  
44 not apply to supplemental water.



1        3. The Commission shall furnish to the State Engineer a copy  
2 of all agreements entered into by the Commission concerning the  
3 original appropriation and use of such waters. It shall also furnish to  
4 the State Engineer any other information it possesses relating to the  
5 use of water from the Colorado River which the State Engineer  
6 deems necessary to allow him to act on applications for permits for  
7 the subsequent appropriation of these waters after they fall within  
8 the State Engineer's jurisdiction.

9        4. Notwithstanding any provision of chapter 533 of NRS, any  
10 original appropriation and use of the waters described in subsection  
11 1 by the Commission or by any entity to whom or with whom the  
12 Commission has contracted the water is not subject to regulation by  
13 the State Engineer.

14        **Sec. 7.** The Legislature declares that it intends by the  
15 amendatory provisions of sections 1 and 4 of this act to clarify  
16 rather than change the operation of chapter 533 of NRS with respect  
17 to the ownership of water rights.

18        **Sec. 8.** There is hereby appropriated from the State General  
19 Fund to the Water Rights Protection Fund, created by section 5 of  
20 this act, the sum of \$1,000,000.

21        **Sec. 9.** 1. This section and sections 1, 4 and 7 of this act  
22 become effective upon passage and approval and apply  
23 retroactively.

24        2. Sections 2, 3, 5, 6 and 8 of this act become effective on  
25 July 1, 2005.

