

ASSEMBLY BILL NO. 285—ASSEMBLYMEN LESLIE, BOBZIEN,
CARPENTER, GOICOECHEA, KIRKPATRICK, MARVEL,
OHRENSCHALL, PIERCE AND SMITH

MARCH 12, 2007

JOINT SPONSOR: SENATOR RHOADS

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing certain transfers of
groundwater. (BDR 48-913)

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

~

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

AN ACT relating to water; revising provisions relating to the protest
of certain applications involving interbasin transfers of
groundwater; and providing other matters properly
relating thereto.

Legislative Counsel's Digest:

Existing law sets forth requirements for the State Engineer to provide certain notice of an application for a permit to appropriate water. These requirements include publishing the notice in a newspaper and if the application is for a well, mailing a copy of the notice to owners of real property containing a domestic well that is within 2,500 feet of the proposed well. (NRS 533.360) Existing law also allows an interested person to file with the State Engineer a written protest to the application. (NRS 533.365)

This bill requires that if the State Engineer fails to grant, deny or hear an application for a permit to appropriate, change the point of diversion of, change the manner of use of, or change the place of use of more than 250 acre-feet of water per annum within 7 years after the date on which the application was submitted, the State Engineer must, if the application involves an interbasin transfer of groundwater, notice a new period of protest of 45 days. This bill also provides that certain successors in interest of persons who had already filed a written protest against the granting of such an application must be allowed to continue pursuing the protest as though they were the person who had filed the original protest.



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

Section 1. NRS 533.365 is hereby amended to read as follows:

533.365 1. Any person interested may, within 30 days from the date of last publication of the notice of application, file with the State Engineer a written protest against the granting of the application, setting forth with reasonable certainty the grounds of such protest, which shall be verified by the affidavit of the protestant, his agent or attorney.

2. On receipt of a protest, the State Engineer shall advise the applicant whose application has been protested of the fact that the protest has been filed with him, which advice shall be sent by certified mail.

3. The State Engineer shall consider the protest, and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved. The State Engineer shall give notice of the hearing by certified mail to both the applicant and the protestant. The notice must state the time and place at which the hearing is to be held and must be mailed at least 15 days before the date set for the hearing.

4. The State Engineer shall adopt rules of practice regarding the conduct of such hearings. The rules of practice must be adopted in accordance with the provisions of NRS 233B.040 to 233B.120, inclusive, and codified in the Nevada Administrative Code. The technical rules of evidence do not apply at such a hearing.

5. The provisions of this section do not prohibit the noticing of a new period of 45 days in which a person may file with the State Engineer a written protest against the granting of the application, if such notification is required to be given pursuant to subsection 8 of NRS 533.370.

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 subsections 3 and ~~8.1~~ 11, 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 ~~8.1~~ 11, 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.

5. Except as otherwise provided in subsection ~~8.1~~ 11, 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



1 interest, the State Engineer shall reject the application and refuse to
2 issue the requested permit. If a previous application for a similar use
3 of water within the same basin has been rejected on those grounds,
4 the new application may be denied without publication.

5 6. In determining whether an application for an interbasin
6 transfer of groundwater must be rejected pursuant to this section, the
7 State Engineer shall consider:

8 (a) Whether the applicant has justified the need to import the
9 water from another basin;

10 (b) If the State Engineer determines that a plan for conservation
11 of water is advisable for the basin into which the water is to be
12 imported, whether the applicant has demonstrated that such a plan
13 has been adopted and is being effectively carried out;

14 (c) Whether the proposed action is environmentally sound as it
15 relates to the basin from which the water is exported;

16 (d) Whether the proposed action is an appropriate long-term use
17 which will not unduly limit the future growth and development in
18 the basin from which the water is exported; and

19 (e) Any other factor the State Engineer determines to be
20 relevant.

21 7. If a hearing is held regarding an application, the decision of
22 the State Engineer must be in writing and include findings of fact,
23 conclusions of law and a statement of the underlying facts
24 supporting the findings of fact. The written decision may take the
25 form of a transcription of an oral ruling. The rejection or approval of
26 an application must be endorsed on a copy of the original
27 application, and a record must be made of the endorsement in the
28 records of the State Engineer. The copy of the application so
29 endorsed must be returned to the applicant. Except as otherwise
30 provided in subsection ~~9.1~~ 12, if the application is approved, the
31 applicant may, on receipt thereof, proceed with the construction of
32 the necessary works and take all steps required to apply the water to
33 beneficial use and to perfect the proposed appropriation. If the
34 application is rejected, the applicant may take no steps toward
35 the prosecution of the proposed work or the diversion and use of the
36 public water while the rejection continues in force.

37 8. *If:*

38 (a) *The State Engineer receives an application to appropriate*
39 *any of the public waters, or to change the point of diversion,*
40 *manner of use or place of use of water already appropriated;*

41 (b) *The application involves an amount of water exceeding 250*
42 *acre-feet per annum;*

43 (c) *The application involves an interbasin transfer of*
44 *groundwater; and*



* A B 2 8 5 R 1 *

(d) Within 7 years after the date of last publication of the notice of application, the State Engineer has not granted the application, denied the application, held an administrative hearing on the application or issued a permit in response to the application,

the State Engineer shall notice a new period of 45 days in which a person may file with the State Engineer a written protest against the granting of the application. Such notification must be entered on the Internet website of the State Engineer and must, concurrently with that notification, be mailed to the board of county commissioners of the county of origin.

9. Except as otherwise provided in subsection 10, a person who wishes to protest an application in accordance with a new period of protest noticed pursuant to subsection 8 shall, within 45 days after the date on which the notification was entered and mailed, file with the State Engineer a written protest that complies with the provisions of this chapter and with the regulations adopted by the State Engineer, including, without limitation, any regulations prescribing the use of particular forms or requiring the payment of certain fees.

10. If a person is the successor in interest of an owner of a water right, an owner of real property containing a domestic well or an owner of an interest in a domestic well, and if that previous owner had already filed a written protest against the granting of an application to allow an interbasin transfer of groundwater, the successor in interest must be allowed to pursue that protest in the same manner as though he were the previous owner to whose interest he succeeded. If such a successor in interest wishes to protest an application in accordance with a new period of protest noticed pursuant to subsection 8, the successor need not file with the State Engineer a new written protest but must, within 45 days after the date on which the notification was entered and mailed, inform the Office of the State Engineer that he wishes to continue pursuing the protest.

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

~~10.~~ 12. The provisions of subsection 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.

~~10.~~ 13. As used in this section ~~["interbasin"]~~ :

(a) "County of origin" means the county from which groundwater is transferred or proposed to be transferred.



1 **(b) “Domestic well” has the meaning ascribed to it in**
2 **NRS 534.350.**

3 **(c) “Interbasin** transfer of groundwater” means a transfer of
4 groundwater for which the proposed point of diversion is in a
5 different basin than the proposed place of beneficial use.

6 **Sec. 3.** This act becomes effective on July 1, 2007.

