

ASSEMBLY BILL NO. 425—ASSEMBLYMEN GOEDHART, BEERS,
CARPENTER, GANSERT, GOICOECHEA, GRADY, MABEY,
MARVEL, MUNFORD, OHRENSCHALL, SEGERBLOM,
SETTELMEYER, STEWART AND WEBER

MARCH 19, 2007

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to the filing of a protest
to an application to appropriate water. (BDR 48-866)

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; prohibiting the State Engineer from
considering a protest to an application to appropriate
water that is filed by a governmental agency or political
subdivision of a government unless the protest is
approved and signed by the person in charge of the
agency or political subdivision; and providing other
matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes any person to file a written protest with the State
Engineer to protest against the State Engineer granting an application for a permit
to appropriate water, or to change the place of diversion, manner of use or place of
use of water already appropriated. (NRS 533.325, 533.365) As used in chapter 533
of NRS, the term "person" is defined to include the United States and this State.
(NRS 533.010) Existing law also requires the State Engineer to consider each
protest that is filed with his office. (NRS 533.365) The State Engineer may hold
hearings and require certain evidence to be filed in order for him to gain a full
understanding of the water rights involved in the protest. (NRS 533.365)

Section 1 of this bill prohibits the State Engineer from considering a protest
that is filed by a governmental agency or political subdivision of a government
unless the protest is approved and signed by the director, administrator, chief, head
or other person in charge of that agency or political subdivision.

Section 2 of this bill imposes a similar prohibition against the State Engineer
when considering an application for a project to recharge, store and recover
groundwater.



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

1 **Section 1.** NRS 533.365 is hereby amended to read as follows:
2 533.365 1. Any person interested may, within 30 days ~~from~~
3 *after* the date of last publication of the notice of application, file
4 with the State Engineer a written protest against the granting of the
5 application, setting forth with reasonable certainty the grounds of
6 ~~such~~ the protest, which ~~shall~~ *must* be verified by the affidavit of
7 the protestant, his agent or attorney.

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

12 3. ~~The~~ *Except as otherwise provided in subsection 5, the*
13 State Engineer shall consider the protest, and may ~~in his~~
14 ~~discretion,~~ hold hearings and require the filing of such evidence as
15 he may deem necessary to a full understanding of the rights
16 involved. The State Engineer shall give notice of the hearing by
17 certified mail to both the applicant and the protestant. The notice
18 must state the time and place at which the hearing is to be held and
19 must be mailed at least 15 days before the date set for the hearing.

20 4. The State Engineer shall adopt rules of practice regarding
21 the conduct of ~~such~~ the hearings. The rules of practice must be
22 adopted in accordance with the provisions of NRS 233B.040 to
23 233B.120, inclusive, and codified in the Nevada Administrative
24 Code. The technical rules of evidence do not apply at such a
25 hearing.

26 5. *The State Engineer shall not consider a protest that is filed*
27 *by a governmental agency or political subdivision of a government*
28 *unless the protest:*

29 (a) *Except as otherwise provided in paragraph (b), is approved*
30 *and signed by the director, administrator, chief, head or other*
31 *person in charge of the governmental agency or political*
32 *subdivision; or*

33 (b) *If the governmental agency or political subdivision is a*
34 *division or other part of a department, is approved and signed by*
35 *the director or other person in charge of that department,*
36 *including, without limitation:*

37 (1) *The Secretary of Agriculture, if the protest is filed by*
38 *the United States Forest Service;*

39 (2) *The Secretary of the Interior, if the protest is filed by the*
40 *Bureau of Land Management or the United States Fish and*
41 *Wildlife Service;*



(3) The Director of the State Department of Conservation and Natural Resources, if the protest is filed by any division of that Department; or

(4) The chairman of the board of county commissioners of a county, if the protest is filed by a county.

6. The provisions of subsection 5 apply only to a right to appropriate water that is vested or perfected before July 1, 2007.

Sec. 2. NRS 534.270 is hereby amended to read as follows:

534.270 1. Upon receipt of an application for a permit to operate a project, the State Engineer shall endorse on the application the date it was received and keep a record of the application. He shall conduct an initial review of the application within 45 days after receipt of the application. If the State Engineer determines in the initial review that the application is incomplete, he shall notify the applicant. The application is incomplete until the applicant files all the information requested in the application. The State Engineer shall determine whether the application is correct within 180 days after receipt of a complete application. The State Engineer may request additional information from the applicant. The State Engineer may conduct such independent investigations as are necessary to determine whether the application should be approved or rejected.

2. If the application is determined to be complete and correct, the State Engineer, within 30 days after such a determination or a longer period if requested by the applicant, shall cause notice of the application to be given once each week for 2 consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the project. The notice must state:

(a) The legal description of the location of the proposed project;

(b) A brief description of the proposed project including its capacity;

(c) That any person who may be adversely affected by the project may file a written protest with the State Engineer within 30 days after the last publication of the notice;

(d) The date of the last publication;

(e) That the grounds for protesting the project are limited to whether the project would be in compliance with subsection 2 of NRS 534.250;

(f) The name of the applicant; and

(g) That a protest must:

(1) State the name and mailing address of the protester;

(2) Clearly set forth the reason why the permit should not be issued; and



(3) Be signed by the protester or the protester's agent or attorney ~~or~~ *or, if the protester is a governmental agency or political subdivision of a government, be approved and signed in the manner specified in subsection 6.*

3. A protest to a proposed project:

(a) May be made by any person who may be adversely affected by the project;

(b) Must be in writing;

(c) Must be filed with the State Engineer within 30 days after the last publication of the notice;

(d) Must be upon a ground listed in subsection 2 of NRS 534.250;

(e) Must state the name and mailing address of the protester;

(f) Must clearly set forth the reason why the permit should not be issued; and

(g) Must be signed by the protester or the protester's agent or attorney ~~or~~ *or, if the protester is a governmental agency or political subdivision of a government, must be approved and signed in the manner specified in subsection 6.*

4. Upon receipt of a protest, the State Engineer shall advise the applicant by certified mail that a protest has been filed.

5. ~~Upon~~ *Except as otherwise provided in subsection 6, upon* receipt of a protest, or upon his own motion, the State Engineer may hold a hearing. Not less than 30 days before the hearing, the State Engineer shall send by certified mail *a* notice of the hearing to the applicant and any person who filed a protest.

6. The State Engineer shall ~~either~~ *not consider a protest that is filed by a governmental agency or political subdivision of a government unless the protest:*

(a) Except as otherwise provided in paragraph (b), is approved and signed by the director, administrator, chief, head or other person in charge of the governmental agency or political subdivision; or

(b) If the governmental agency or political subdivision is a division or other part of a department, is approved and signed by the director or other person in charge of that department, including, without limitation:

(1) The Secretary of Agriculture, if the protest is filed by the United States Forest Service;

(2) The Secretary of the Interior, if the protest is filed by the Bureau of Land Management or the United States Fish and Wildlife Service;

(3) The Director of the State Department of Conservation and Natural Resources, if the protest is filed by any division of that Department; or



1 ***(4) The chairman of the board of county commissioners of***
2 ***a county, if the protest is filed by a county.***

3 ***7. The provisions of subsection 6 apply only to a project for***
4 ***which the proposed source of water is vested or perfected before***
5 ***July 1, 2007.***

6 ***8. The State Engineer shall*** approve or deny each application
7 within 1 year after the final date for filing a protest, unless he has
8 received a written request from the applicant to postpone his
9 decision or, in the case of a protested application, from both the
10 protester and the applicant. The State Engineer may delay action on
11 the application pursuant to paragraph (c) of subsection 2 of
12 NRS 533.370.

13 ~~17.1~~ ***9.*** Any person aggrieved by any decision of the State
14 Engineer made pursuant to subsection ~~16.1~~ ***8*** may appeal that
15 decision to the district court pursuant to NRS 533.450.

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

