

SENATE BILL NO. 274—COMMITTEE ON NATURAL RESOURCES

(ON BEHALF OF THE LEGISLATIVE COMMISSION’S
COMMITTEE TO STUDY THE USE, MANAGEMENT,
AND ALLOCATION OF WATER RESOURCES)

MARCH 13, 2007

Referred to Committee on Natural Resources

SUMMARY—Makes various changes to provisions relating to
water. (BDR 48-206)

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; expanding the purposes for which the State Engineer may adopt regulations; authorizing the State Engineer to impose administrative fines and to order payment of the costs of certain proceedings; authorizing the State Engineer to consider the consumptive use of a water right under certain circumstances; authorizing the State Engineer to seek injunctive relief for certain violations; 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:

Pursuant to existing law, the State Engineer may make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred on him by law. (NRS 532.120) The penalty prescribed for the violation of a majority of the provisions set forth in chapters 533, 534, 535 and 536 of NRS is a misdemeanor. (NRS 533.480, 534.190, 535.110, 536.120)

Section 1 of this bill expands the provisions for which the State Engineer may adopt regulations to include chapters 534, 535 and 536 of NRS in addition to chapter 533 of NRS. **Sections 3, 7, 10 and 14** of this bill provide the State Engineer with the additional authority to impose, after notice and opportunity for a hearing, administrative fines, to require a person to replace certain unlawfully taken or wasted water, and to recover expenses incurred in investigating and stopping various water law violations. **Section 7** provides additionally that: (1) in



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determining violations relating to the unauthorized use of water from certain wells, it is the burden of the State Engineer to prove which user or users of water are withdrawing water in excess of their individual allotments; and (2) the State Engineer may require users of water from certain wells to install and maintain, at their own expense, meters to measure their individual withdrawal of water.

Sections 4, 8, 11 and 15 of this bill authorize the State Engineer to seek injunctive relief to prevent a violation or continued violation of chapters 533, 534, 535 and 536 of NRS.

Section 3.3 of this bill authorizes the State Engineer to consider the consumptive use of a water right in determining the appropriateness of approving a proposed change in the place of diversion, manner of use or place of use of water pursuant to that right. **Section 3.5** of this bill authorizes the State Engineer, upon approval of an application to appropriate water, to limit the initial use of that water to an amount that is less than the total amount approved. If the State Engineer at a later date determines that water is available for the total amount approved for the application, he may authorize the use of that additional amount.

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) **Sections 4.7 and 4.9** of this bill require 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.

Section 16 of this bill requires the State Engineer to consider certain matters in adopting regulations to carry out the amendatory provisions of this bill.

Section 17 of this bill requires the State Engineer, on or before January 1, 2009, to submit to the Director of the Legislative Counsel Bureau a written report detailing his efforts in, and progress toward, the development and adoption of regulations to carry out the amendatory provisions of this bill.

Section 18 of this bill prohibits the State Engineer, before July 1, 2009, from imposing an administrative penalty pursuant to the amendatory provisions of this bill or any regulations adopted to carry out those amendatory provisions.

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

Section 1. NRS 532.120 is hereby amended to read as follows:
532.120 1. The State Engineer ~~is empowered to~~ **may** make such reasonable rules and regulations as may be necessary for the proper and orderly execution of the powers conferred by law.

2. The State Engineer ~~shall have power to make rules,~~ **may adopt regulations,** not in conflict with law, governing the practice and procedure in all contests before his office, to ~~insure~~ **ensure** the



proper and orderly exercise of the powers granted by law, and the speedy accomplishment of the purposes of ~~[chapter]~~ *chapters* 533, 534, 535 and 536 of NRS. Such rules of practice and procedure ~~[shall]~~ *must* be furnished to any person upon application therefor.

Sec. 2. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 2.5 to 4.5, inclusive, of this act.

Sec. 2.5. (Deleted by amendment.)

Sec. 3. 1. *In addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter or any permit, certificate, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120 to:*

(a) Pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.

(b) In the case of an unauthorized use or willful waste of water in violation of NRS 533.460 or an unlawful diversion of water in violation of NRS 533.530, or any other violation of this chapter that, as determined by the State Engineer, results in an unlawful use, waste or diversion of water, replace not more than 200 percent of the water used, wasted or diverted.

2. If an administrative fine is imposed against a person pursuant to subsection 1 or the person is ordered to replace any water pursuant to that subsection, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney's fees.

3. An order imposing an administrative fine or requiring the replacement of water or the payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to NRS 533.450.

Sec. 3.3. 1. *The State Engineer may consider the consumptive use of a water right and the consumptive use of a proposed beneficial use of water in determining whether a proposed change in the place of diversion, manner of use or place of use complies with the provisions of subsection 5 of NRS 533.370.*

2. The provisions of this section:

(a) Must not be applied by the State Engineer in a manner that is inconsistent with any applicable federal or state decree concerning consumptive use.

(b) Do not apply to any decreed, certified or permitted right to appropriate water which originates in the Virgin River or the Muddy River.



Sec. 3.5. 1. *Upon approval of an application to appropriate water, the State Engineer may limit the initial use of water to a quantity that is less than the total amount approved for the application. The use of an additional amount of water that is not more than the total amount approved for the application may be authorized by the State Engineer at a later date if additional evidence demonstrates to the satisfaction of the State Engineer that the additional amount of water is available and may be appropriated in accordance with this chapter and chapter 534 of NRS. In making that determination, the State Engineer may establish a period during which additional studies may be conducted or additional evidence provided to support the application.*

2. *In any basin in which an application to appropriate water is approved pursuant to subsection 1, the State Engineer may act upon any other pending application to appropriate water in that basin that the State Engineer concludes constitutes the use of a minimal amount of water.*

Sec. 4. 1. *The State Engineer may seek injunctive relief in the appropriate court to prevent the continuance or occurrence of any act or practice which violates any provision of this chapter, or any permit, certificate, decision or order issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120.*

2. *On a showing by the State Engineer that a person is engaged, or is about to engage, in any act or practice which violates or will violate any provision of this chapter, or any permit, certificate, decision or order issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120, the court may issue, without a bond, any prohibitory or mandatory injunction that the facts may warrant, including a temporary restraining order issued ex parte or, after notice and hearing, a preliminary or permanent injunction.*

3. *Failure to establish lack of an adequate remedy at law or irreparable harm is not a ground for denying a request for a temporary restraining order or injunction.*

4. *The court may require the posting of a sufficient performance bond or other security to ensure compliance with the court order within the period prescribed.*

5. *Any proceeding conducted or injunction or order issued pursuant to this section is in addition to, and not in lieu of, any other penalty or remedy available for a violation specified in this section.*

Sec. 4.5. *The State Engineer shall not carry out his duties pursuant to this chapter in a manner that conflicts with any*



applicable provision of a decree or order issued by a state or federal court, an interstate compact or an agreement to which this State is a party for the interstate allocation of water pursuant to an act of Congress.

Sec. 4.7. NRS 533.365 is hereby amended to read as follows:

533.365 1. Any person interested may, within 30 days ~~from~~ *after* 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~~ *must* 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~~ *must* 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. *Each applicant and each protestant shall, in accordance with a schedule established by the State Engineer, provide to the State Engineer and to each protestant and each applicant information required by the State Engineer relating to the application or protest.*

5. *If the State Engineer holds a hearing pursuant to subsection 3, the State Engineer shall render a decision on each application not later than 240 days after the later of:*

(a) The date all transcripts of the hearing become available to the State Engineer; or

(b) The date specified by the State Engineer for the filing of any additional information, evidence, studies or compilations requested by the State Engineer. The State Engineer may, for good cause shown, extend any applicable period.

6. The State Engineer shall adopt rules of practice regarding the conduct of ~~such hearings.~~ *a hearing held pursuant to subsection 3.* 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.

7. *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. 4.9. 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 and NRS 533.365*, 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 ~~8.7~~ 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 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.

6. In determining whether an application for an interbasin transfer of groundwater 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.

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 ~~9.~~ 12, 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.

8. *If:*

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

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

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

(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 who is a successor in interest to a protestant or an affected water right owner 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 is a successor in interest to a protestant or an affected water right owner 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 or an owner of real property upon which a domestic well is located and if the former owner of the water right or real property on which a domestic well is located had previously filed a written protest against the granting of an application, the successor in interest must be allowed to pursue that protest in the same manner as if he were the former owner whose interest he succeeded. If the successor in interest wishes to pursue the protest,*



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1 *the successor in interest must notify the State Engineer on a form*
2 *provided by the State Engineer.*

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

5 ~~[9.]~~ 12. The provisions of subsection 7 do not authorize the
6 recipient of an approved application to use any state land
7 administered by the Division of State Lands of the State Department
8 of Conservation and Natural Resources without the appropriate
9 authorization for that use from the State Land Registrar.

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

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

13 (b) *"Domestic well" has the meaning ascribed to it in*
14 *NRS 534.350.*

15 (c) *"Interbasin transfer of groundwater" means a transfer of*
16 *groundwater for which the proposed point of diversion is in a*
17 *different basin than the proposed place of beneficial use.*

18 **Sec. 5.** NRS 533.450 is hereby amended to read as follows:

19 533.450 1. Any person feeling himself aggrieved by any
20 order or decision of the State Engineer, acting in person or through
21 his assistants or the water commissioner, affecting his interests,
22 when ~~[such]~~ *the* order or decision relates to the administration of
23 determined rights or is made pursuant to NRS 533.270 to 533.445,
24 inclusive, *or section 3, 7, 10 or 14 of this act*, may have the same
25 reviewed by a proceeding for that purpose, insofar as may be in the
26 nature of an appeal, which ~~[shall]~~ *must* be initiated in the proper
27 court of the county in which the matters affected or a portion thereof
28 are situated, ~~[,]~~ but on stream systems where a decree of court has
29 been entered, the action ~~[shall]~~ *must* be initiated in the court that
30 entered the decree. ~~[Such]~~ *The* order or decision of the State
31 Engineer ~~[shall be and remain]~~ *remains* in full force and effect
32 unless proceedings to review the same are commenced in the proper
33 court within 30 days ~~[following]~~ *after* the rendition of the order or
34 decision in question and notice thereof is given to the State Engineer
35 as provided in subsection 3.

36 2. The proceedings in every case ~~[shall]~~ *must* be heard by the
37 court, and ~~[shall]~~ *must* be informal and summary, but full
38 opportunity ~~[shall]~~ *must* be had before judgment is
39 pronounced.

40 3. No such proceedings may be entertained unless notice
41 thereof, containing a statement of the substance of the order or
42 decision complained of, and of the manner in which the same
43 injuriously affects the petitioner's interests, has been served upon
44 the State Engineer, personally or by registered or certified mail, at
45 his office at the State Capital within 30 days following the rendition



1 of the order or decision in question. A similar notice ~~{shall}~~ *must*
2 also be served personally or by registered or certified mail upon the
3 person ~~{or persons}~~ who may have been affected by ~~{such}~~ *the* order
4 or decision.

5 4. Where evidence has been filed with, or testimony taken
6 before, the State Engineer, a transcribed copy thereof, or of any
7 specific part of the same, duly certified as a true and correct
8 transcript in the manner provided by law, ~~{shall}~~ *must* be received in
9 evidence with the same effect as if the reporter were present and
10 testified to the facts so certified. A copy of the transcript ~~{shall}~~
11 *must* be furnished on demand, at actual cost, to any person affected
12 by ~~{such}~~ *the* order or decision, and to all other persons on payment
13 of a reasonable amount therefor, to be fixed by the State Engineer.

14 5. A bond ~~{shall}~~ *must* not be required except when a stay is
15 desired, and the proceedings provided for in this section are not a
16 stay unless, within 5 days ~~{following}~~ *after* the service of notice
17 thereof, a bond is filed in an amount to be fixed by the court, with
18 sureties satisfactory to ~~{such}~~ *the* court, conditioned to perform the
19 judgment rendered in ~~{such}~~ *the* proceedings.

20 6. Costs ~~{shall}~~ *must* be paid as in civil cases brought in the
21 district court, except by the State Engineer or the State.

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

24 8. Appeals may be taken to the Supreme Court from the
25 judgment of the district court in the same manner as in other civil
26 cases.

27 9. The decision of the State Engineer ~~{shall be}~~ *is* prima facie
28 correct, and the burden of proof ~~{shall be}~~ *is* upon the party
29 attacking the same.

30 10. Whenever it appears to the State Engineer that any
31 litigation, whether now pending or hereafter brought, may adversely
32 affect the rights of the public in water, he shall request the Attorney
33 General to appear and protect the interests of the State.

34 **Sec. 6.** Chapter 534 of NRS is hereby amended by adding
35 thereto the provisions set forth as sections 7 and 8 of this act.

36 **Sec. 7. 1.** *Except as otherwise provided in NRS 534.280,*
37 *534.310 and 534.330 and in addition to any other penalty provided*
38 *by law, the State Engineer may, after notice and opportunity for a*
39 *hearing, require a person who violates any provision of this*
40 *chapter or any permit, order or decision issued or regulation*
41 *adopted by the State Engineer pursuant to this chapter or NRS*
42 *532.120 to:*

43 *(a) Pay an administrative fine not to exceed \$10,000 per day*
44 *for each violation as determined by the State Engineer.*



(b) *In the case of an unlawful waste of water in violation of NRS 534.070 or any other violation of this chapter that, as determined by the State Engineer, results in an unlawful use, waste or diversion of water, replace not more than 200 percent of the water used, wasted or diverted.*

2. *In determining violations of this chapter relating to the unauthorized use of water yielded from a well that is used pursuant to a permit issued by the State Engineer and that has 16 or fewer connections, the State Engineer has the burden of proving which user is withdrawing water in excess of the portion of water allotted to the connection of that user. The State Engineer may require any or all users of the well to install and maintain, at their own expense, a meter that measures the amount of water withdrawn from the well by each connection.*

3. *If an administrative fine is imposed against a person pursuant to subsection 1 or the person is ordered to replace any water pursuant to that subsection, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney's fees.*

4. *An order imposing an administrative fine or requiring the replacement of water or payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to NRS 533.450.*

Sec. 8. 1. *The State Engineer may seek injunctive relief in the appropriate court to prevent the continuance or occurrence of any act or practice which violates any provision of this chapter, or any permit, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120.*

2. *On a showing by the State Engineer that a person is engaged, or is about to engage, in any act or practice which violates or will violate any provision of this chapter, or any permit, order or decision issued or regulation adopted by the State Engineer pursuant to this chapter or NRS 532.120, the court may issue, without a bond, any prohibitory or mandatory injunction that the facts may warrant, including a temporary restraining order issued ex parte or, after notice and hearing, a preliminary or permanent injunction.*

3. *Failure to establish lack of an adequate remedy at law or irreparable harm is not a ground for denying a request for a temporary restraining order or injunction.*

4. *The court may require the posting of a sufficient performance bond or other security to ensure compliance with the court order within the period prescribed.*



1 5. *Any proceeding conducted or injunction or order issued*
2 *pursuant to this section is in addition to, and not in lieu of, any*
3 *other penalty or remedy available for a violation of this chapter.*

4 **Sec. 9.** Chapter 535 of NRS is hereby amended by adding
5 thereto the provisions set forth as sections 10 and 11 of this act.

6 **Sec. 10.** 1. *In addition to any other penalty provided by law,*
7 *the State Engineer may, after notice and opportunity for a*
8 *hearing, require a person who violates any provision of this*
9 *chapter, any permit, order or decision issued by the State Engineer*
10 *pursuant to this chapter or any regulation adopted by the State*
11 *Engineer pursuant to NRS 532.120 to pay an administrative fine*
12 *not to exceed \$10,000 per day for each violation as determined by*
13 *the State Engineer.*

14 2. *If an administrative fine is imposed against a person*
15 *pursuant to subsection 1, the State Engineer may require the*
16 *person to pay the costs of the proceeding, including investigative*
17 *costs and attorney's fees.*

18 3. *An order imposing an administrative fine or requiring the*
19 *payment of costs or fees pursuant to this section may be reviewed*
20 *by a district court pursuant to NRS 533.450.*

21 **Sec. 11.** 1. *The State Engineer may seek injunctive relief in*
22 *the appropriate court to prevent the continuance or occurrence of*
23 *any act or practice which violates any provision of this chapter,*
24 *any permit, order or decision issued by the State Engineer*
25 *pursuant to this chapter or any regulation adopted by the State*
26 *Engineer pursuant to NRS 532.120.*

27 2. *On a showing by the State Engineer that a person is*
28 *engaged, or is about to engage, in any act or practice which*
29 *violates or will violate any provision of this chapter, any permit,*
30 *order or decision issued by the State Engineer pursuant to this*
31 *chapter or any regulation adopted by the State Engineer pursuant*
32 *to NRS 532.120, the court may issue, without a bond, any*
33 *prohibitory or mandatory injunction that the facts may warrant,*
34 *including a temporary restraining order issued ex parte or, after*
35 *notice and hearing, a preliminary or permanent injunction.*

36 3. *Failure to establish lack of an adequate remedy at law or*
37 *irreparable harm is not a ground for denying a request for a*
38 *temporary restraining order or injunction.*

39 4. *The court may require the posting of a sufficient*
40 *performance bond or other security to ensure compliance with the*
41 *court order within the period prescribed.*

42 5. *Any proceeding conducted or injunction or order issued*
43 *pursuant to this section is in addition to, and not in lieu of, any*
44 *other penalty or remedy available for a violation of this chapter.*



Sec. 12. NRS 535.100 is hereby amended to read as follows:

535.100 1. ~~[It is unlawful for any person being]~~ *Any person who is* the owner of or in possession of any sawmill used for the making of lumber, or any slaughterhouse, brewery or tannery ~~[to]~~ *shall not* injure or obstruct the natural flow of water in any river, creek or other stream.

2. Any city or county government, or any person, ~~[being]~~ *who is* the owner of or in possession of any agricultural lands ~~[, who may be]~~ *and who is* injured by reason of the violation on the part of any person of the provisions contained in subsection 1 ~~[, shall have the right to]~~ *may* commence and maintain an action against ~~[such]~~ *the* person for any damage sustained, in such manner as may be provided by law.

~~[3. Any person who shall willfully and knowingly violate the provisions of this section shall be punished by a fine of not more than \$500.]~~

Sec. 13. Chapter 536 of NRS is hereby amended by adding thereto the provisions set forth as sections 14 and 15 of this act.

Sec. 14. 1. *In addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter, any order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to NRS 532.120 to pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.*

2. *If an administrative fine is imposed against a person pursuant to subsection 1, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney's fees.*

3. *An order imposing an administrative fine or requiring the payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to NRS 533.450.*

Sec. 15. 1. *The State Engineer may seek injunctive relief in the appropriate court to prevent the continuance or occurrence of any act or practice which violates any provision of this chapter, any order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to NRS 532.120.*

2. *On a showing by the State Engineer that a person is engaged, or is about to engage, in any act or practice which violates or will violate any provision of this chapter, any order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to NRS 532.120, the court may issue, without a bond, any prohibitory or*



1 *mandatory injunction that the facts may warrant, including a*
2 *temporary restraining order issued ex parte or, after notice and*
3 *hearing, a preliminary or permanent injunction.*

4 3. *Failure to establish lack of an adequate remedy at law or*
5 *irreparable harm is not a ground for denying a request for a*
6 *temporary restraining order or injunction.*

7 4. *The court may require the posting of a sufficient*
8 *performance bond or other security to ensure compliance with the*
9 *court order within the period prescribed.*

10 5. *Any proceeding conducted or injunction or order issued*
11 *pursuant to this section is in addition to, and not in lieu of, any*
12 *other penalty or remedy available for a violation of this chapter.*

13 **Sec. 16.** The State Engineer shall, in adopting regulations to
14 carry out the amendatory provisions of sections 1, 3, 4, 4.5, 7, 8, 10,
15 11, 12, 14 and 15 of this act:

16 1. Consider establishing a minimum threshold amount of water
17 that a user of water would be required to exceed in using, wasting or
18 diverting water in an unlawful manner before an administrative
19 penalty would be imposed;

20 2. Comply with the provisions of chapter 233B of NRS;

21 3. Consider waiving an administrative penalty for a violation if
22 the violator has, in the determination of the State Engineer, made
23 significant progress toward correcting the violation; and

24 4. In addition to the requirements of subsection 1, consider
25 waiving an administrative penalty in the case of an unauthorized use
26 or willful waste of water in violation of NRS 533.460 or an
27 unlawful diversion of water in violation of NRS 533.530, if the
28 amount of water so used or wasted does not exceed 2 acre-feet per
29 annum.

30 **Sec. 17.** The State Engineer shall, on or before January 1,
31 2009, submit to the Director of the Legislative Counsel Bureau a
32 written report detailing the efforts and progress of the State
33 Engineer in developing and adopting regulations to carry out the
34 amendatory provisions of this act.

35 **Sec. 18.** The State Engineer shall not, before July 1, 2009,
36 impose an administrative penalty pursuant to the amendatory
37 provisions of this act or any regulations adopted to carry out the
38 amendatory provisions of this act.

39 **Sec. 19.** The amendatory provisions of subsection 8 of section
40 4.9 of this act do not apply to:

41 1. An application to appropriate water filed before July 1,
42 2007;

43 2. An application to change the place of diversion, manner of
44 use or place of use of appropriated water filed before that date; or



- 1 3. A written protest relating to an application specified in
2 subsection 1 or 2.
3 **Sec. 20.** This act becomes effective on July 1, 2007.

