

SENATE BILL NO. 405—SENATOR AMODEI

MARCH 19, 2007

Referred to Committee on Natural Resources

SUMMARY—Revises provisions governing the appropriation of water. (BDR 48-1158)

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

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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 the authority of the State Engineer relating to the appropriation, allocation and determination of availability of unappropriated water; authorizing the State Engineer to consider the consumptive use of a water right under certain circumstances; authorizing the State Engineer to limit the initial use of water upon approval of an application to appropriate water under certain circumstances; making various other changes concerning the powers and duties of the State Engineer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Chapter 533 of NRS provides for the adjudication of water rights and the appropriation of water by the State Engineer. **Section 1** of this bill provides that the State Engineer has full and exclusive authority with respect to the appropriation, allocation and determination of availability of unappropriated water and the place of diversion, manner of use and place of use of appropriated water. **Section 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 4** 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 provides for interested persons to protest applications to appropriate water. (NRS 533.365) **Section 7** of this bill authorizes the State Engineer to refuse to consider a protest if certain information concerning the protest is not received by the State Engineer. **Section 7** makes various other changes



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concerning protests before the State Engineer, including, without limitation, requiring the State Engineer to render a decision regarding each application within 240 days after a hearing on the application.

Existing law authorizes the State Engineer, for good cause shown, to extend the time within which water must be applied to a beneficial use under a permit for that use. (NRS 533.380) **Section 9** of this bill authorizes the State Engineer to grant such an extension of time if the permit is the subject of a pending judicial proceeding.

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

Section 1. Chapter 532 of NRS is hereby amended by adding thereto a new section to read as follows:

The State Engineer has full, exclusive and final authority with respect to:

1. The appropriation, allocation and determination of availability of unappropriated water; and

2. The place of diversion, manner of use and place of use of appropriated water.

Sec. 2. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this act.

Sec. 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. 4. 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*



1 *establish a period during which additional studies may be*
2 *conducted or additional evidence provided to support the*
3 *application.*

4 *2. In any basin in which an application to appropriate water*
5 *is approved pursuant to subsection 1, the State Engineer may,*
6 *pursuant to this chapter and chapter 534 of NRS, act upon any*
7 *other pending application to appropriate water in that basin that*
8 *the State Engineer concludes constitutes the use of a minimal*
9 *amount of water.*

10 **Sec. 5.** (Deleted by amendment.)

11 **Sec. 6.** (Deleted by amendment.)

12 **Sec. 7.** NRS 533.365 is hereby amended to read as follows:

13 533.365 1. Any person interested may, within 30 days ~~from~~
14 *after* the date of last publication of the notice of application, file
15 with the State Engineer a written protest against the granting of the
16 application, setting forth with reasonable certainty the grounds of
17 such protest, which ~~shall~~ *must* be verified by the affidavit of the
18 protestant, his agent or attorney.

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

23 3. ~~The~~ *Except as otherwise provided in subsection 4, the*
24 *State Engineer shall consider the protest, and may* ~~[- in his~~
25 ~~discretion.]~~ *hold hearings and require the filing of such evidence as*
26 *he may deem necessary to a full understanding of the rights*
27 *involved. The State Engineer shall give notice of the hearing by*
28 *certified mail to both the applicant and the protestant. The notice*
29 *must state the time and place at which the hearing is to be held and*
30 *must be mailed at least 15 days before the date set for the hearing.*

31 4. *In addition to the provisions of subsection 5, the State*
32 *Engineer may refuse to consider the protest if the protestant fails*
33 *to provide information relating to the protest required by the State*
34 *Engineer.*

35 5. *Each applicant and each protestant shall, in accordance*
36 *with a schedule established by the State Engineer, provide to the*
37 *State Engineer and to each protestant and each applicant*
38 *information required by the State Engineer relating to the*
39 *application or protest.*

40 6. *The State Engineer or any member of his technical staff*
41 *may communicate with any applicant, protestant, interested*
42 *person, governmental entity, technical representative or expert for*
43 *the purposes of obtaining information which the State Engineer*
44 *deems necessary to act on a protested application if the State*
45 *Engineer:*



1 (a) Provides notice of the communication to each applicant,
2 protestant, interested person, governmental entity, technical
3 representative or expert with whom the State Engineer did not
4 communicate relating to the protested application; and

5 (b) Provides an opportunity to respond to each applicant,
6 protestant, interested person, governmental entity, technical
7 representative or expert specified in paragraph (a).

8 7. The State Engineer may invite technical representatives of
9 the applicant, the protestant, an interested person or a
10 governmental entity to meet with the technical staff of the State
11 Engineer to consider issues relating to an application to
12 appropriate water.

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

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

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

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

27 **Sec. 8.** NRS 533.370 is hereby amended to read as follows:

28 533.370 1. Except as otherwise provided in this section and
29 NRS 533.345, 533.371, 533.372 and 533.503, the State Engineer
30 shall approve an application submitted in proper form which
31 contemplates the application of water to beneficial use if:

32 (a) The application is accompanied by the prescribed fees;

33 (b) The proposed use or change, if within an irrigation district,
34 does not adversely affect the cost of water for other holders of water
35 rights in the district or lessen the efficiency of the district in its
36 delivery or use of water; and

37 (c) The applicant provides proof satisfactory to the State
38 Engineer of:

39 (1) His intention in good faith to construct any work
40 necessary to apply the water to the intended beneficial use with
41 reasonable diligence; and

42 (2) His financial ability and reasonable expectation actually
43 to construct the work and apply the water to the intended beneficial
44 use with reasonable diligence.



2. Except as otherwise provided in this subsection and subsections 3 and 8 ~~H~~ *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, 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, 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, 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. The provisions of subsections 1 to 6, inclusive, do not apply to an application for an environmental permit.

9. 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. As used in this section, "interbasin transfer of groundwater" means a transfer of groundwater for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.



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Sec. 9. NRS 533.380 is hereby amended to read as follows:

533.380 1. Except as otherwise provided in subsection 5, in his endorsement of approval upon any application, the State Engineer shall:

(a) Set a time before which the construction of the work must be completed, which must be within 5 years after the date of approval.

(b) Except as otherwise provided in this paragraph, set a time before which the complete application of water to a beneficial use must be made, which must not exceed 10 years after the date of the approval. The time set under this paragraph respecting an application for a permit to apply water to a municipal or quasi-municipal use on any land:

(1) For which a final subdivision map has been recorded pursuant to chapter 278 of NRS;

(2) For which a plan for the development of a project has been approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(3) On any land for which a plan for the development of a planned unit development has been recorded pursuant to chapter 278A of NRS,

↪ must not be less than 5 years.

2. The State Engineer may limit the applicant to a smaller quantity of water, to a shorter time for the completion of work, and, except as otherwise provided in paragraph (b) of subsection 1, to a shorter time for the perfecting of the application than named in the application.

3. Except as otherwise provided in subsection 4 and NRS 533.395 and 533.4377, the State Engineer may, for good cause shown, *including, without limitation, a pending judicial proceeding*, extend the time within which construction work must be completed, or water must be applied to a beneficial use under any permit therefor issued by him, but an application for the extension must in all cases be:

(a) Made within 30 days following notice by registered or certified mail that proof of the work is due as provided for in NRS 533.390 and 533.410; and

(b) Accompanied by proof and evidence of the reasonable diligence with which the applicant is pursuing the perfection of the application.

↪ The State Engineer shall not grant an extension of time unless he determines from the proof and evidence so submitted that the applicant is proceeding in good faith and with reasonable diligence to perfect the application. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence



1 that the holder is not proceeding in good faith and with reasonable
2 diligence to perfect the application.

3 4. Except as otherwise provided in subsection 5 and NRS
4 533.395, whenever the holder of a permit issued for any municipal
5 or quasi-municipal use of water on any land referred to in paragraph
6 (b) of subsection 1, or for any use which may be served by a county,
7 city, town, public water district or public water company, requests
8 an extension of time to apply the water to a beneficial use, the State
9 Engineer shall, in determining whether to grant or deny the
10 extension, consider, among other factors:

11 (a) Whether the holder has shown good cause for not having
12 made a complete application of the water to a beneficial use;

13 (b) The number of parcels and commercial or residential units
14 which are contained in or planned for the land being developed or
15 the area being served by the county, city, town, public water district
16 or public water company;

17 (c) Any economic conditions which affect the ability of the
18 holder to make a complete application of the water to a beneficial
19 use;

20 (d) Any delays in the development of the land or the area being
21 served by the county, city, town, public water district or public
22 water company which were caused by unanticipated natural
23 conditions; and

24 (e) The period contemplated in the:

25 (1) Plan for the development of a project approved by the
26 local government pursuant to NRS 278.010 to 278.460, inclusive; or

27 (2) Plan for the development of a planned unit development
28 recorded pursuant to chapter 278A of NRS,

29 ➔ if any, for completing the development of the land.

30 5. The provisions of subsections 1 and 4 do not apply to an
31 environmental permit.

32 6. For the purposes of this section, the measure of reasonable
33 diligence is the steady application of effort to perfect the application
34 in a reasonably expedient and efficient manner under all the facts
35 and circumstances. When a project or integrated system is
36 comprised of several features, work on one feature of the project or
37 system may be considered in finding that reasonable diligence has
38 been shown in the development of water rights for all features of the
39 entire project or system.

40 **Sec. 10.** (Deleted by amendment.)

