

Amendment No. 812

Senate Amendment to Assembly Bill No. 285 First Reprint (BDR 48-913)

Proposed by: Senate Committee on Natural Resources**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

| ASSEMBLY ACTION | | | | Initial and Date | SENATE ACTION | | | | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

JRS/TMC



Date: 5/20/2007

A.B. No. 285—Revises provisions governing certain transfers of groundwater.
(BDR 48-913)



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

MARCH 12, 2007

JOINT SPONSOR: SENATOR RHODS

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing ~~certain transfers of groundwater~~ **the appropriation of water**. (BDR 48-913)

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;** 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:

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 5 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 5 makes various other changes 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 and authorizing a successor in interest of a person who has filed a written protest to the application to be allowed to continue pursuing the protest in the same manner as the person who filed the original protest.

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~~ Section 6 of 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.]~~

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 right. (NRS 533.380) Section 7 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 and 4 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 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, pursuant to this chapter and chapter 534 of NRS, 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.

~~[Section 1.]~~ Sec. 5. 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]~~ Except as otherwise provided in subsection 4, 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. In addition to the provisions of subsection 5, the State Engineer may refuse to consider the protest if the protestant fails to provide information relating to the protest required by the State Engineer.

5. 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.

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

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

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

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

8. 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.

~~9.~~ 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.

~~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 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, the successor in interest must notify the State Engineer of that fact on a form prescribed by the State Engineer.

11. 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.

12. As used in this section, "domestic well" has the meaning ascribed to it in NRS 534.350.

~~Sec. 2.~~ **Sec. 6.** 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,~~ 10 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,~~ 10, 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

1 proposed point of diversion is on real property that is proven to be owned by the
2 applicant and is contiguous to the place of use of the existing water right. The State
3 Engineer may:

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

6 (b) In areas where studies of water supplies have been determined to be
7 necessary by the State Engineer pursuant to NRS 533.368 or where court actions
8 are pending, withhold action until it is determined there is unappropriated water or
9 the court action becomes final.

10 4. If the State Engineer does not act upon an application within 1 year after
11 the final date for filing a protest, the application remains active until acted upon by
12 the State Engineer.

13 5. Except as otherwise provided in subsection ~~f8.1~~ ~~f4.1~~ 10, where there is no
14 unappropriated water in the proposed source of supply, or where its proposed use or
15 change conflicts with existing rights or with protectible interests in existing
16 domestic wells as set forth in NRS 533.024, or threatens to prove detrimental to the
17 public interest, the State Engineer shall reject the application and refuse to issue
18 the requested permit. If a previous application for a similar use of water within the
19 same basin has been rejected on those grounds, the new application may be denied
20 without publication.

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

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

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

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

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

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

36 7. If a hearing is held regarding an application, the decision of the State
37 Engineer must be in writing and include findings of fact, conclusions of law and a
38 statement of the underlying facts supporting the findings of fact. The written
39 decision may take the form of a transcription of an oral ruling. The rejection or
40 approval of an application must be endorsed on a copy of the original application,
41 and a record must be made of the endorsement in the records of the State Engineer.
42 The copy of the application so endorsed must be returned to the applicant. Except
43 as otherwise provided in subsection ~~f9.1~~ ~~f2.1~~ 11, if the application is approved, the
44 applicant may, on receipt thereof, proceed with the construction of the necessary
45 works and take all steps required to apply the water to beneficial use and to perfect
46 the proposed appropriation. If the application is rejected, the applicant may take no
47 steps toward the prosecution of the proposed work or the diversion and use of the
48 public water while the rejection continues in force.

49 8. *If:*

50 (a) *The State Engineer receives an application to appropriate any of the*
51 *public waters, or to change the point of diversion, manner of use or place of use*
52 *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 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,~~ **NRS 533.365**, 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.

~~9,~~ ~~12,~~ **11.** 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,~~ **12.** As used in this section ~~["interbasin"]~~:

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

(b) ~~["Domestic well"]~~ has the meaning ascribed to it in **NRS 534.350.**

~~(c)~~ "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.

Sec. 7. 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

1 respecting an application for a permit to apply water to a municipal or quasi-
2 municipal use on any land;

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

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

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

9 ↪ must not be less than 5 years.

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

14 3. Except as otherwise provided in subsection 4 and NRS 533.395 and
15 533.4377, the State Engineer may, for good cause shown, including, without
16 limitation, a pending judicial proceeding, extend the time within which
17 construction work must be completed, or water must be applied to a beneficial use
18 under any permit therefor issued by him, but an application for the extension must
19 in all cases be:

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

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

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

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

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

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

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

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

47 (e) The period contemplated in the:

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

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

52 ↪ if any, for completing the development of the land.

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

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

9 **Sec. 8. The amendatory provisions of subsections 10 and 11 of section 5**
10 **and section 6 of this act do not apply to:**

- 11 1. An application to appropriate water filed before July 1, 2007;
12 2. An application to change the place of diversion, manner of use or place
13 of use of appropriated water filed before that date; or
14 3. A written protest relating to an application specified in subsection 1
15 or 2.

16 ~~Sec. 3.~~ Sec. 9. This act becomes effective on July 1, 2007.