

ASSEMBLY BILL NO. 276—ASSEMBLYMEN GOEDHART; CARPENTER,
CHRISTENSEN, COBB, GANSERT, GOICOECHEA, GRADY,
HAMBRICK, HARDY, SETTELMAYER, STEWART AND
WOODBURY

MARCH 10, 2009

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to the filing of a protest to
an application to appropriate water. (BDR 48-1041)

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 on the State Engineer when
considering an application for a project to recharge, store and recover groundwater.



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

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

533.365 1. Any person interested may, within 30 days 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~~ the protest, which 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 must be sent by certified mail.

3. ~~The~~ *Except as otherwise provided in subsection 5, 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. *The State Engineer shall 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



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

3 ***6. The provisions of subsection 5 apply only to a right to***
4 ***appropriate water that is vested or perfected before July 1, 2009.***

5 ***7.*** If the State Engineer holds a hearing pursuant to subsection
6 3, the State Engineer shall render a decision on each application not
7 later than 240 days after the later of:

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

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

14 ~~16.1~~ ***8.*** The State Engineer shall adopt rules of practice
15 regarding the conduct of a hearing held pursuant to subsection 3.
16 The rules of practice must be adopted in accordance with the
17 provisions of NRS 233B.040 to 233B.120, inclusive, and codified in
18 the Nevada Administrative Code. The technical rules of evidence do
19 not apply at such a hearing.

20 ~~17.1~~ ***9.*** The provisions of this section do not prohibit the
21 noticing of a new period of 45 days in which a person may file with
22 the State Engineer a written protest against the granting of the
23 application, if such notification is required to be given pursuant to
24 subsection 8 of NRS 533.370.

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

26 534.270 1. Upon receipt of an application for a permit to
27 operate a project, the State Engineer shall endorse on the application
28 the date it was received and keep a record of the application. He
29 shall conduct an initial review of the application within 45 days after
30 receipt of the application. If the State Engineer determines in the
31 initial review that the application is incomplete, he shall notify the
32 applicant. The application is incomplete until the applicant files all
33 the information requested in the application. The State Engineer
34 shall determine whether the application is correct within 180 days
35 after receipt of a complete application. The State Engineer may
36 request additional information from the applicant. The State
37 Engineer may conduct such independent investigations as are
38 necessary to determine whether the application should be approved
39 or rejected.

40 2. If the application is determined to be complete and correct,
41 the State Engineer, within 30 days after such a determination or a
42 longer period if requested by the applicant, shall cause notice of the
43 application to be given once each week for 2 consecutive weeks in a
44 newspaper of general circulation in the county or counties in which



1 persons reside who could reasonably be expected to be affected by
2 the project. The notice must state:

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

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

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

9 (d) The date of the last publication;

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

13 (f) The name of the applicant; and

14 (g) That a protest must:

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

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

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

22 3. A protest to a proposed project:

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

25 (b) Must be in writing;

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

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

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

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

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

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

39 5. ~~Upon~~ *Except as otherwise provided in subsection 6, upon*
40 receipt of a protest, or upon his own motion, the State Engineer may
41 hold a hearing. Not less than 30 days before the hearing, the State
42 Engineer shall send by certified mail notice of the hearing to the
43 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*

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

7. *The provisions of subsection 6 apply only to a project for which the proposed source of water is vested or perfected before July 1, 2009.*

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

~~7-1~~ 9. Any person aggrieved by any decision of the State Engineer made pursuant to subsection ~~6-1~~ 8 may appeal that decision to the district court pursuant to NRS 533.450.

Sec. 3. This act becomes effective on July 1, 2009.

