

## Amendment No. 201

Assembly Amendment to Assembly Bill No. 377

(BDR 48-887)

**Proposed by:** Assembly Committee on Government Affairs**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 dashed underlining*** is newly added transitory language.

MSN/TMC



Date: 4/5/2009

A.B. No. 377—Revises provisions governing the approval of an application for the beneficial use of water. (BDR 48-887)



## ASSEMBLY BILL NO. 377—ASSEMBLYMAN BOBZIEN

MARCH 16, 2009

Referred to Committee on Government Affairs

SUMMARY—Revises ~~provisions governing the approval of an application for the beneficial use of~~ the policy of this State concerning water. (BDR 48-887)

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; ~~imposing an additional condition on the approval by the State Engineer of an application for the beneficial use of water;~~ declaring the policy of this State to encourage the State Engineer to consider the best available science in rendering decisions concerning the available surface and underground sources of water in Nevada; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

~~With certain exceptions, existing law requires the State Engineer to approve an application which contemplates the application of water to a beneficial use if: (1) the application is accompanied by the prescribed fees; (2) 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 (3) the applicant provides proof satisfactory to the State Engineer of his intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence and proof satisfactory of his financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence. (NRS 533.370) This bill imposes as an additional condition on the approval of such an application that the proposed use or change must not adversely affect any surrounding surface or underground source of water. This bill declares the policy of this State to encourage the State Engineer to consider the best available science in rendering decisions concerning the available surface and underground sources of water in Nevada. (NRS 533.024)~~

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

**Section 1.** ~~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 does not adversely affect any surrounding surface or underground source of water;~~

~~(c) 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)] (d) 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 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 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 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:~~

~~1 (a) Whether the applicant has justified the need to import the water from another basin;~~

~~2 (b) If the State Engineer determines that a plan for conservation of water is~~  
~~3 advisable for the basin into which the water is to be imported, whether the applicant~~  
~~4 has demonstrated that such a plan has been adopted and is being effectively carried~~  
~~5 out;~~

~~6 (c) Whether the proposed action is environmentally sound as it relates to the~~  
~~7 basin from which the water is exported;~~

~~8 (d) Whether the proposed action is an appropriate long-term use which will not~~  
~~9 unduly limit the future growth and development in the basin from which the water~~  
~~10 is exported; and~~

~~11 (e) Any other factor the State Engineer determines to be relevant.~~

~~12 7. If a hearing is held regarding an application, the decision of the State~~  
~~13 Engineer must be in writing and include findings of fact, conclusions of law and a~~  
~~14 statement of the underlying facts supporting the findings of fact. The written~~  
~~15 decision may take the form of a transcription of an oral ruling. The rejection or~~  
~~16 approval of an application must be endorsed on a copy of the original application,~~  
~~17 and a record must be made of the endorsement in the records of the State Engineer.~~  
~~18 The copy of the application so endorsed must be returned to the applicant. Except~~  
~~19 as otherwise provided in subsection 12, if the application is approved, the applicant~~  
~~20 may, on receipt thereof, proceed with the construction of the necessary works and~~  
~~21 take all steps required to apply the water to beneficial use and to perfect the~~  
~~22 proposed appropriation. If the application is rejected, the applicant may take no~~  
~~23 steps toward the prosecution of the proposed work or the diversion and use of the~~  
~~24 public water while the rejection continues in force.~~

~~25 8. If:~~

~~26 (a) The State Engineer receives an application to appropriate any of the public~~  
~~27 waters, or to change the point of diversion, manner of use or place of use of water~~  
~~28 already appropriated;~~

~~29 (b) The application involves an amount of water exceeding 250 acre-feet per~~  
~~30 annum;~~

~~31 (c) The application involves an interbasin transfer of groundwater; and~~

~~32 (d) Within 7 years after the date of last publication of the notice of application,~~  
~~33 the State Engineer has not granted the application, denied the application, held an~~  
~~34 administrative hearing on the application or issued a permit in response to the~~  
~~35 application;~~

~~36 the State Engineer shall notice a new period of 45 days in which a person who is~~  
~~37 a successor in interest to a protestant or an affected water right owner may file with~~  
~~38 the State Engineer a written protest against the granting of the application. Such~~  
~~39 notification must be entered on the Internet website of the State Engineer and must,~~  
~~40 concurrently with that notification, be mailed to the board of county commissioners~~  
~~41 of the county of origin.~~

~~42 9. Except as otherwise provided in subsection 10, a person who is a successor~~  
~~43 in interest to a protestant or an affected water right owner who wishes to protest an~~  
~~44 application in accordance with a new period of protest noticed pursuant to~~  
~~45 subsection 8 shall, within 45 days after the date on which the notification was~~  
~~46 entered and mailed, file with the State Engineer a written protest that complies with~~  
~~47 the provisions of this chapter and with the regulations adopted by the State~~  
~~48 Engineer, including, without limitation, any regulations prescribing the use of~~  
~~49 particular forms or requiring the payment of certain fees.~~

~~50 10. If a person is the successor in interest of an owner of a water right or an~~  
~~51 owner of real property upon which a domestic well is located and if the former~~  
~~52 owner of the water right or real property on which a domestic well is located had~~  
~~53~~

1 ~~previously filed a written protest against the granting of an application, the~~  
2 ~~successor in interest must be allowed to pursue that protest in the same manner as if~~  
3 ~~he were the former owner whose interest he succeeded. If the successor in interest~~  
4 ~~wishes to pursue the protest, the successor in interest must notify the State Engineer~~  
5 ~~on a form provided by the State Engineer.~~

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

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

12 ~~13. As used in this section:~~

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

15 ~~(b) "Domestic well" has the meaning ascribed to it in NRS 534.250.~~

16 ~~(c) "Interbasin transfer of groundwater" means a transfer of groundwater for~~  
17 ~~which the proposed point of diversion is in a different basin than the proposed place~~  
18 ~~of beneficial use.] (Deleted by amendment.)~~

19 **Sec. 2. NRS 533.024 is hereby amended to read as follows:**

20 533.024 The Legislature declares that:

21 1. It is the policy of this State:

22 (a) To encourage and promote the use of effluent, where that use is not  
23 contrary to the public health, safety or welfare, and where that use does not  
24 interfere with federal obligations to deliver water of the Colorado River.

25 (b) To recognize the importance of domestic wells as appurtenances to private  
26 homes, to create a protectible interest in such wells and to protect their supply of  
27 water from unreasonable adverse effects which are caused by municipal, quasi-  
28 municipal or industrial uses and which cannot reasonably be mitigated.

29 **(c) To encourage the State Engineer to consider the best available science in**  
30 **rendering decisions concerning the available surface and underground sources**  
31 **of water in Nevada.**

32 2. The procedures in this chapter for changing the place of diversion, manner  
33 of use or place of use of water, and for confirming a report of conveyance, are not  
34 intended to have the effect of quieting title to or changing ownership of a water  
35 right and that only a court of competent jurisdiction has the power to determine  
36 conflicting claims to ownership of a water right.