

SENATE BILL NO. 66—COMMITTEE ON NATURAL RESOURCES

(ON BEHALF OF DOUGLAS COUNTY)

PREFILED DECEMBER 9, 2008

Referred to Committee on Government Affairs

SUMMARY—Revises certain provisions governing the appropriation of water. (BDR 48-618)

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; providing that certain uses of water from the Muddy River and the Virgin River are beneficial uses of that water; authorizing the State Engineer to grant extensions of time for not more than a certain period for the completion of work or the application of water to a beneficial use; revising the circumstances under which the fee for filing an application for an extension of time must be paid; setting forth the circumstances under which an order or decision of the State Engineer may be stayed; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that, subject to existing rights, all water in this State may be appropriated for beneficial use in accordance with the provisions of chapter 533 of NRS. (NRS 533.030) **Section 1** of this bill provides that the use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus, as defined in certain guidelines established by the United States Department of the Interior, is a beneficial use of that water for purposes of that chapter.

Existing law requires an applicant for water rights to complete construction of work and put water to beneficial use within specified periods, with extensions of time allowed under certain circumstances. (NRS 533.380) **Section 2** of this bill authorizes the State Engineer to grant any number of extensions of time to complete the work or to make beneficial use of the water, but limits any single extension of time for a municipal or quasi-municipal use for a public water system to not more than 5 years and any other single extension of time to not more than 1 year.

Existing law sets forth the fee for filing an application for an extension of time to file a proof of completion of work or proof of beneficial use. (NRS 533.435)



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Section 3 of this bill specifies that the fee must be paid for each year for which an extension of time is sought.

Existing law sets forth the manner in which a person who is aggrieved by an order or decision of the State Engineer may appeal that order or decision to the appropriate court. (NRS 533.450) **Section 4** of this bill sets forth the manner in which the order or decision of the State Engineer may be stayed during the appeal of the order or decision.

Existing law specifies the jurisdiction of the Colorado River Commission of Nevada concerning water and water rights in this State and the extent to which the appropriation and use of that water is not subject to regulation by the State Engineer. (NRS 538.171) **Section 5** of this bill specifies that any use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus is not subject to regulation by the State Engineer.

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

Section 1. NRS 533.030 is hereby amended to read as follows:

533.030 1. Subject to existing rights, and except as otherwise provided in this section, all water may be appropriated for beneficial use as provided in this chapter and not otherwise.

2. The use of water, from any stream system as provided in this chapter and from underground water as provided in NRS 534.080, for any recreational purpose, *or the use of water from the Muddy River or the Virgin River to create any developed shortage supply or intentionally created surplus*, is hereby declared to be a beneficial use. *As used in this subsection:*

(a) *“Developed shortage supply” has the meaning ascribed to it in Volume 73 of the Federal Register at page 19,884, April 11, 2008, and any subsequent amendment thereto.*

(b) *“Intentionally created surplus” has the meaning ascribed to it in Volume 73 of the Federal Register at page 19,884, April 11, 2008, and any subsequent amendment thereto.*

3. Except as otherwise provided in subsection 4, in any county whose population is 400,000 or more:

(a) The board of county commissioners may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any man-made lake or stream located within the unincorporated areas of the county.

(b) The governing body of a city may prohibit or restrict by ordinance the use of water and effluent for recreational purposes in any man-made lake or stream located within the boundaries of the city.

4. In any county whose population is 400,000 or more, the provisions of subsection 1 and of any ordinance adopted pursuant to subsection 3 do not apply to:



(a) Water stored in a man-made reservoir for use in flood control, in meeting peak water demands or for purposes relating to the treatment of sewage;

(b) Water used in a mining reclamation project; or

(c) A body of water located in a recreational facility that is open to the public and owned or operated by the United States or the State of Nevada.

Sec. 2. 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, ~~extend the~~ *grant any number of extensions of* 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 ~~but~~ *a single extension of time for a municipal or quasi-municipal use for a public water system, as defined in NRS 445A.235, must not exceed 5 years, and any other single extension of time must not exceed 1 year. 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 that the holder is not proceeding in good faith and with reasonable diligence to perfect the application.

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

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

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

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

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

(e) The period contemplated in the:

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

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

➤ if any, for completing the development of the land.

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

6. For the purposes of this section, the measure of reasonable diligence is the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts



1 and circumstances. When a project or integrated system is
2 ~~comprised~~ *composed* of several features, work on one feature of
3 the project or system may be considered in finding that reasonable
4 diligence has been shown in the development of water rights for all
5 features of the entire project or system.

6 **Sec. 3.** NRS 533.435 is hereby amended to read as follows:

7 533.435 1. The State Engineer shall collect the following
8 fees:
9

10 For examining and filing an application for a
11 permit to appropriate water.....\$250.00

12 This fee includes the cost of publication,
13 which is \$50.

14 For examining and acting upon plans and
15 specifications for construction of a dam500.00

16 For examining and filing an application for each
17 permit to change the point of diversion, manner
18 of use or place of use of an existing right150.00

19 This fee includes the cost of the publication
20 of the application, which is \$50.

21 For issuing and recording each permit to
22 appropriate water for any purpose, except for
23 generating hydroelectric power which results in
24 nonconsumptive use of the water or watering
25 livestock or wildlife purposes150.00
26 plus \$2 per acre-foot approved or fraction
27 thereof.

28 For issuing and recording each permit to change an
29 existing right whether temporary or permanent
30 for any purpose, except for generating
31 hydroelectric power which results in
32 nonconsumptive use of the water, for watering
33 livestock or wildlife purposes which change the
34 point of diversion or place of use only, or for
35 irrigational purposes which change the point of
36 diversion or place of use only100.00
37 plus \$2 per acre-foot approved or fraction
38 thereof.

39 For issuing and recording each permit to change
40 the point of diversion or place of use only of an
41 existing right whether temporary or permanent
42 for irrigational purposes200.00



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1	For issuing and recording each permit to	
2	appropriate or change the point of diversion or	
3	place of use of an existing right only whether	
4	temporary or permanent for watering livestock	
5	or wildlife purposes for each second-foot of	
6	water approved or fraction thereof.....	\$50.00
7	For issuing and recording each permit to	
8	appropriate or change an existing right whether	
9	temporary or permanent for water for	
10	generating hydroelectric power which results in	
11	nonconsumptive use of the water for each	
12	second-foot of water approved or fraction	
13	thereof	100.00
14	This fee must not exceed \$1,000.	
15	For filing a secondary application under a reservoir	
16	permit	200.00
17	For approving and recording a secondary permit	
18	under a reservoir permit	200.00
19	For reviewing each tentative subdivision map	150.00
20	plus \$1 per lot.	
21	For storage approved under a dam permit for	
22	privately owned nonagricultural dams which	
23	store more than 50 acre-feet.....	100.00
24	plus \$1 per acre-foot storage capacity. This	
25	fee includes the cost of inspection and	
26	must be paid annually.	
27	For filing proof of completion of work	10.00
28	For filing proof of beneficial use	50.00
29	For filing any protest	25.00
30	For filing any application for extension of time	
31	within which to file proofs , <i>for each year for</i>	
32	<i>which the extension of time is sought</i>	100.00
33	For examining and filing a report of conveyance	
34	filed pursuant to paragraph (a) of subsection 1	
35	of NRS 533.384	25.00
36	plus \$10 per conveyance document	
37	For filing any other instrument	1.00
38	For making <i>a</i> copy of any document recorded or	
39	filed in his office, for the first page.....	1.00
40	For each additional page20
41	For certifying to copies of documents, records or	
42	maps, for each certificate	1.00
43	For each blueprint copy of any drawing or map, per	
44	square foot.....	.50
45	The minimum charge for a blueprint copy, per print	3.00



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2. When fees are not specified in subsection 1 for work required of his office, the State Engineer shall collect the actual cost of the work.

3. Except as otherwise provided in this subsection, all fees collected by the State Engineer under the provisions of this section must be deposited in the State Treasury for credit to the *State* General Fund. All fees received for blueprint copies of any drawing or map must be kept by him and used only to pay the costs of printing, replacement and maintenance of printing equipment. Any publication fees received which are not used by him for publication expenses must be returned to the persons who paid the fees. If, after exercising due diligence, the State Engineer is unable to make the refunds, he shall deposit the fees in the State Treasury for credit to the *State* General Fund. The State Engineer may maintain, with the approval of the State Board of Examiners, a checking account in any bank or credit union qualified to handle state money to carry out the provisions of this subsection. The account must be secured by a depository bond satisfactory to the State Board of Examiners to the extent the account is not insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

Sec. 4. NRS 533.450 is hereby amended to read as follows:

533.450 1. Any person feeling himself aggrieved by any order or decision of the State Engineer, acting in person or through his assistants or the water commissioner, affecting his interests, when the order or decision relates to the administration of determined rights or is made pursuant to NRS 533.270 to 533.445, inclusive, or NRS 533.481, 534.193, 535.200 or 536.200, may have the same reviewed by a proceeding for that purpose, insofar as may be in the nature of an appeal, which must be initiated in the proper court of the county in which the matters affected or a portion thereof are situated, but on stream systems where a decree of court has been entered, the action must be initiated in the court that entered the decree. The order or decision of the State Engineer remains in full force and effect unless proceedings to review the same are commenced in the proper court within 30 days after the rendition of the order or decision in question and notice thereof is given to the State Engineer as provided in subsection 3.

2. The proceedings in every case must be heard by the court, and must be informal and summary, but full opportunity to be heard must be had before judgment is pronounced.

3. No such proceedings may be entertained unless notice thereof, containing a statement of the substance of the order or decision complained of, and of the manner in which the same injuriously affects the petitioner's interests, has been served upon



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1 the State Engineer, personally or by registered or certified mail, at
2 his office at the State Capital within 30 days following the rendition
3 of the order or decision in question. A similar notice must also be
4 served personally or by registered or certified mail upon the person
5 who may have been affected by the order or decision.

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

15 5. *An order or decision of the State Engineer must not be*
16 *stayed unless the petitioner files a written motion for a stay with*
17 *the court and serves the motion personally or by registered or*
18 *certified mail upon the State Engineer, the applicant or other real*
19 *party in interest and each party of record within 10 days after the*
20 *petitioner files the petition for judicial review. Any party may*
21 *oppose the motion and the petitioner may reply to any such*
22 *opposition. In determining whether to grant or deny the motion*
23 *for a stay, the court shall consider:*

24 (a) *Whether any nonmoving party to the proceeding may incur*
25 *any harm or hardship if the stay is granted;*

26 (b) *Whether the petitioner may incur any irreparable harm if*
27 *the stay is denied;*

28 (c) *The likelihood of success of the petitioner on the merits;*
29 *and*

30 (d) *Any potential harm to the members of the public if the stay*
31 *is granted.*

32 6. *Except as otherwise provided in this subsection, the*
33 *petitioner must file a bond in an amount determined by the court,*
34 *with sureties satisfactory to the court and conditioned in the*
35 *manner specified by the court. The bond must be filed within 5*
36 *days after the court determines the amount of the bond pursuant*
37 *to this subsection. If the petitioner fails to file the bond within that*
38 *period, the stay is automatically denied.* A bond must not be

39 required ~~except when a stay is desired, and the proceedings~~
40 ~~provided for in this section are not a stay unless, within 5 days after~~
41 ~~the service of notice thereof, a bond is filed in an amount to be fixed~~
42 ~~by the court, with sureties satisfactory to the court, conditioned to~~
43 ~~perform the judgment rendered in the proceedings.~~

44 ~~—6.1~~ *for a public agency of this State or a political subdivision of*
45 *this State.*



7. Costs must be paid as in civil cases brought in the district court, except by the State Engineer or the State.

~~{7}~~ 8. The practice in civil cases applies to the informal and summary character of such proceedings, as provided in this section.

~~{8}~~ 9. Appeals may be taken to the Supreme Court from the judgment of the district court in the same manner as in other civil cases.

~~{9}~~ 10. The decision of the State Engineer is prima facie correct, and the burden of proof is upon the party attacking the same.

~~{10}~~ 11. Whenever it appears to the State Engineer that any litigation, whether now pending or hereafter brought, may adversely affect the rights of the public in water, he shall request the Attorney General to appear and protect the interests of the State.

Sec. 5. NRS 538.171 is hereby amended to read as follows:

538.171 1. The Commission shall receive, protect and safeguard and hold in trust for the State of Nevada all water and water rights, and all other rights, interests or benefits in and to the waters described in NRS 538.041 to 538.251, inclusive, and to the power generated thereon, held by or which may accrue to the State of Nevada under and by virtue of any Act of the Congress of the United States or any agreements, compacts or treaties to which the State of Nevada may become a party, or otherwise.

2. Except as otherwise provided in this subsection, applications for the original appropriation of such waters, or to change the place of diversion, manner of use or place of use of water covered by the original appropriation, must be made to the Commission in accordance with the regulations of the Commission. In considering such an application, the Commission shall use the criteria set forth in subsection 6 of NRS 533.370. The Commission's action on the application constitutes the recommendation of the State of Nevada to the United States for the purposes of any federal action on the matter required by law. The provisions of this subsection do not apply to supplemental water.

3. The Commission shall furnish to the State Engineer a copy of all agreements entered into by the Commission concerning the original appropriation and use of such waters. It shall also furnish to the State Engineer any other information it possesses relating to the use of water from the Colorado River which the State Engineer deems necessary to allow him to act on applications for permits for the subsequent appropriation of these waters after they fall within the State Engineer's jurisdiction.

4. Notwithstanding any provision of chapter 533 of NRS, any original appropriation and use of the waters described in subsection 1 by the Commission or by any entity to whom or with whom the



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1 Commission has contracted the water , *or any use of water from the*
2 *Muddy River or the Virgin River to create any developed shortage*
3 *supply or intentionally created surplus*, is not subject to regulation
4 by the State Engineer. *As used in this subsection:*

5 (a) *“Developed shortage supply” has the meaning ascribed to*
6 *it in NRS 533.030.*

7 (b) *“Intentionally created surplus” has the meaning ascribed*
8 *to it in NRS 533.030.*

9 **Sec. 6.** This act becomes effective on July 1, 2009.

