

ASSEMBLY BILL NO. 115—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON PUBLIC LANDS)

PREFILED FEBRUARY 3, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the appropriation of water for beneficial use. (BDR 48-207)

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; revising provisions governing the approval or rejection by the State Engineer of an application to appropriate water for beneficial use; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, any person who wishes to appropriate water for beneficial use in Nevada, or change the place of diversion, manner of use or place of use of water already appropriated, is required to first apply to the State Engineer for a permit to do so. (NRS 533.325) Any interested person may file a written protest against the granting of such a permit with the State Engineer. (NRS 533.365) For most applications, the State Engineer is required to approve or reject the application within 1 year after the final date for filing a protest. However, the State Engineer is authorized to postpone taking action on applications for certain specified reasons. (NRS 533.370)

This bill increases the period in which the State Engineer is required to approve or reject an application to 2 years, unless action is postponed on the application. If the State Engineer has not postponed action on the application and does not take action on the application within 2-years after the final day for filing a protest, the State Engineer is required to cause republication of notice of the application on the Internet website of the State Engineer for 30 days after the expiration of the 2-year period and protests are authorized to be filed against the granting of the application. If the State Engineer has postponed action on the application and does not take action on the application within 7 years after the final day for filing a protest, the State Engineer is required to cause notice of the action to be republished in a newspaper and protests are authorized to be filed in the typical manner. Also under this bill, if two or more applications are made to appropriate water from the same basin, and if action is postponed on the application that is made first, the State



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23 Engineer is authorized to act on any later application only after determining that
24 water is available in the basin in an amount in excess of the amount requested in the
25 postponed application. This bill makes other conforming changes to carry out the
26 revisions to the process for approving or rejecting applications.

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

1 **Section 1.** NRS 533.360 is hereby amended to read as follows:

2 533.360 1. Except as otherwise provided in subsection 4 ~~{,}~~
3 ~~and NRS 533.345 , {and subsection 5 of NRS 533.370,}~~ when a
4 application is filed in compliance with this chapter, the State
5 Engineer shall, within 30 days, publish or cause to be published
6 once a week for 4 consecutive weeks in a newspaper of general
7 circulation and printed and published in the county where the water
8 is sought to be appropriated, a notice of the application which sets
9 forth:

- 10 (a) That the application has been filed.
11 (b) The date of the filing.
12 (c) The name and address of the applicant.
13 (d) The name of the source from which the appropriation is to be
14 made.
15 (e) The location of the place of diversion, described by legal
16 subdivision or metes and bounds and by a physical description of
17 that place of diversion.
18 (f) The purpose for which the water is to be appropriated.
19 ➔ The publisher shall add thereto the date of the first publication
20 and the date of the last publication.

21 2. Except as otherwise provided in subsection 4, proof of
22 publication must be filed within 30 days after the final day of
23 publication. The State Engineer shall pay for the publication from
24 the application fee. If the application is cancelled for any reason
25 before publication, the State Engineer shall return to the applicant
26 that portion of the application fee collected for publication.

27 3. If the application is for a proposed well:
28 (a) For municipal, quasi-municipal or industrial use; and
29 (b) Whose reasonably expected rate of diversion is one-half
30 cubic foot per second or more,

31 ➔ the applicant shall mail a copy of the notice of application to each
32 owner of real property containing a domestic well that is within
33 2,500 feet of the proposed well, to the owner's address as shown in
34 the latest records of the county assessor. If there are not more than
35 six such wells, notices must be sent to each owner by certified mail,
36 return receipt requested. If there are more than six such wells, at
37 least six notices must be sent to owners by certified mail, return



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1 receipt requested. The return receipts from these notices must be
2 filed with the State Engineer before the State Engineer may consider
3 the application.

4 4. The provisions of this section do not apply to an
5 environmental permit.

6 **Sec. 2.** NRS 533.365 is hereby amended to read as follows:

7 533.365 1. Any person interested may, within 30 days after
8 the date of last publication of the notice of application, file with the
9 State Engineer a written protest against the granting of the
10 application, setting forth with reasonable certainty the grounds of
11 such protest, which must be verified by the affidavit of the
12 protestant, or an agent or attorney thereof.

13 2. On receipt of a protest, the State Engineer shall advise the
14 applicant whose application has been protested of the fact that the
15 protest has been filed with the State Engineer, which advice must be
16 sent by certified mail.

17 3. The State Engineer shall consider the protest, and may, in
18 his or her discretion, hold hearings and require the filing of such
19 evidence as the State Engineer may deem necessary to a full
20 understanding of the rights involved. The State Engineer shall give
21 notice of the hearing by certified mail to both the applicant and
22 the protestant. The notice must state the time and place at which the
23 hearing is to be held and must be mailed at least 15 days before the
24 date set for the hearing.

25 4. Each applicant and each protestant shall, in accordance with
26 a schedule established by the State Engineer, provide to the State
27 Engineer and to each protestant and each applicant information
28 required by the State Engineer relating to the application or protest.

29 5. If the State Engineer holds a hearing pursuant to subsection
30 3, the State Engineer shall render a decision on each application not
31 later than 240 days after the later of:

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

34 (b) The date specified by the State Engineer for the filing of any
35 additional information, evidence, studies or compilations requested
36 by the State Engineer. The State Engineer may, for good cause
37 shown, extend any applicable period.

38 6. The State Engineer shall adopt rules of practice regarding
39 the conduct of a hearing held pursuant to subsection 3. The rules of
40 practice must be adopted in accordance with the provisions of NRS
41 233B.040 to 233B.120, inclusive, and codified in the Nevada
42 Administrative Code. The technical rules of evidence do not apply
43 at such a hearing.

44 ~~17. The provisions of this section do not prohibit the noticing of~~
45 ~~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.~~

Sec. 3. 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) *There is unappropriated water in the proposed source of supply;*

(c) *The proposed use or change does not conflict with existing rights or with protectable interests in existing domestic wells as set forth in NRS 533.024;*

(d) *The proposed use or change does not threaten to prove detrimental to the public interest;*

(e) 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

~~(e)~~ (f) The applicant provides proof satisfactory to the State Engineer of the applicant's:

(1) Intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and

(2) Financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence.

2. *If a previous application for a similar use of water within the same basin has been rejected because the application did not meet the requirements set forth in subsection 1, the State Engineer may reject a new application without publication.*

3. Except as otherwise provided in this subsection and ~~subsections 3 and 11~~ *subsection 10* and NRS 533.365, the State Engineer shall approve or reject each application within ~~1 year~~ *2 years* after the final date for filing a protest. The State Engineer may ~~;~~

~~(a) Postpone~~ *postpone* action ~~upon~~ :

(a) *Upon* written authorization to do so by the applicant . ~~for, if~~

(b) *If* an application is protested . ~~by the protestant and the applicant.~~

~~(b) Postpone action if~~

(c) *If* the purpose for which the application was made is municipal use.



~~{(e)}~~ (d) In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368 . ~~{or where}~~

(e) *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.}~~

(f) *In areas in which adjudication of vested water rights is ongoing.*

(g) *On an application for a permit to change a vested water right in an area where vested water rights have not been adjudicated.*

(h) *Where authorized entry to any land needed to use the water for which the application is submitted is required by a governmental agency.*

4. If the State Engineer *has not postponed action on an application pursuant to subsection 3 and* does not act upon ~~{an}~~ the application within ~~{1 year}~~ *2 years* after the final date for filing a protest, the ~~{application remains active until acted upon by the}~~ State Engineer ~~{,}~~ *shall cause notice of the application to be republished on the Internet website of the State Engineer for 30 days immediately following the expiration of the 2-year period. A protest may be filed in accordance with NRS 533.365.*

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 protectable 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.}~~ *If the State Engineer has postponed action on an application pursuant to subsection 3 and does not act upon the application within 7 years after the final date for filing a protest, the State Engineer shall cause notice of the application to be republished pursuant to NRS 533.360. The cost of the republication must be paid by the applicant.*

6. If two or more applications are made to appropriate water from the same basin as determined by the State Engineer, and action on the application made first is postponed pursuant to subsection 3, the State Engineer may act on each remaining application only if the State Engineer determines that water is available in the basin in an amount which exceeds the amount requested in each postponed application.

7. 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) If the applicant does not intend to place the water to beneficial use personally, whether a contractual or agency relationship exists between the applicant and a purveyor of water; and

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

~~{7-}~~ *8.* 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 ~~12.~~ 11, 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. If:~~

~~(a) The State Engineer receives an application to appropriate any of the public waters, or to change the point of diversion, manner of use or place of use 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 who is a successor in interest to a protestant or an affected water right owner 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, a person who is a successor in interest to a protestant or an affected water right owner 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.]~~ 9. 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 of the water right or real property on which a domestic well is located 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 the successor in interest were the former owner whose interest he or she succeeded. If the successor in interest wishes to pursue the



1 protest, the successor in interest must notify the State Engineer on a
2 form provided by the State Engineer.

3 ~~{11.}~~ 10. The provisions of subsections 1 to ~~{6.}~~ 9, inclusive, do
4 not apply to an application for an environmental permit.

5 ~~{12.}~~ 11. The provisions of subsection ~~{7.}~~ 8 do not authorize
6 the recipient of an approved application to use any state land
7 administered by the Division of State Lands of the State Department
8 of Conservation and Natural Resources without the appropriate
9 authorization for that use from the State Land Registrar.

10 ~~{13.}~~ 12. As used in this section ~~{:~~

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

13 ~~(b) "Domestic", "domestic well" has the meaning ascribed to it~~
14 in NRS 534.350.

15 **Sec. 4.** NRS 533.3703 is hereby amended to read as follows:

16 533.3703 1. The State Engineer may consider the
17 consumptive use of a water right and the consumptive use of a
18 proposed beneficial use of water in determining whether a proposed
19 change in the place of diversion, manner of use or place of use
20 ~~{complies with the provisions}~~ satisfies the conditions of
21 ~~{subsection 5}~~ paragraphs (b), (c) and (d) of subsection 1 of
22 NRS 533.370.

23 2. The provisions of this section:

24 (a) Must not be applied by the State Engineer in a manner that is
25 inconsistent with any applicable federal or state decree concerning
26 consumptive use.

27 (b) Do not apply to any decreed, certified or permitted right to
28 appropriate water which originates in the Virgin River or the Muddy
29 River.

30 **Sec. 5.** NRS 534.270 is hereby amended to read as follows:

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



2. If the application is determined to be complete and correct, the State Engineer, within 30 days after such a determination or a longer period if requested by the applicant, shall cause notice of the application to be given once each week for 2 consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the project. The notice must state:

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

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

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

(d) The date of the last publication;

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

(f) The name of the applicant; and

(g) That a protest must:

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

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

(3) Be signed by the protester or the protester's agent or attorney.

3. A protest to a proposed project:

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

(b) Must be in writing;

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

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

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

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

(g) Must be signed by the protester or the protester's agent or attorney.

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

5. Upon receipt of a protest, or upon the motion of the State Engineer, the State Engineer may hold a hearing. Not less than 30 days before the hearing, the State Engineer shall send by certified mail notice of the hearing to the applicant and any person who filed a protest.



6. The State Engineer shall either approve or deny each application within 1 year after the final date for filing a protest, unless the State Engineer has received a written request from the applicant to postpone making a 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)~~ paragraphs (d) and (e) of subsection ~~f2~~ 3 of NRS 533.370.

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

Sec. 6. 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 ~~f6~~ 7 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 the State Engineer 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 Commission has contracted the water is not subject to regulation by the State Engineer.



1 5. Any use of water from the Muddy River or the Virgin River
2 for the creation of any developed shortage supply or intentionally
3 created surplus does not require the submission of an application to
4 the State Engineer to change the place of diversion, manner of use
5 or place of use. As used in this subsection:

6 (a) "Developed shortage supply" has the meaning ascribed to it
7 in NRS 533.030.

8 (b) "Intentionally created surplus" has the meaning ascribed to it
9 in NRS 533.030.

10 **Sec. 7.** The provisions of NRS 533.370, as amended by
11 section 3 of this act, do not apply to:

12 1. An application to appropriate water filed before July 1,
13 2011;

14 2. An application to change the place of diversion, manner of
15 use or place of use of appropriated water filed before that date; or

16 3. A written protest relating to an application specified in
17 subsection 1 or 2.

18 **Sec. 8.** This act becomes effective on July 1, 2011.

