

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 approved or rejected the application within the 2-year period, the application remains active. If the State Engineer has not approved or rejected or held a hearing 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. This bill makes other conforming changes to carry out the revisions to the process for approving or rejecting applications.



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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 NRS 533.345 and subsection ~~1~~ 2 of NRS 533.370, when an
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
38 receipt requested. The return receipts from these notices must be
39 filed with the State Engineer before the State Engineer may consider
40 the application.

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



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Sec. 2. 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 protest, which must be verified by the affidavit of the protestant, or an agent or attorney thereof.

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 the State Engineer, which advice must be sent by certified mail.

3. The State Engineer shall consider the protest, and may, in his or her discretion, hold hearings and require the filing of such evidence as the State Engineer 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. 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.

6. The State Engineer shall adopt rules of practice regarding the conduct of 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.

~~{7. 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.}~~



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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) 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 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. *Except as otherwise provided in subsection 10, 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.*

3. *In addition to the criteria set forth in subsections 1 and 2, 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*



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

3 4. Except as otherwise provided in this subsection and
4 subsections ~~{3}~~ 6 and ~~{11}~~ 10 and NRS 533.365, the State Engineer
5 shall approve or reject each application within ~~{1-year}~~ 2 years after
6 the final date for filing a protest. The State Engineer may ~~±~~:

7 ~~—(a) Postpone~~ postpone action ~~{upon}~~ :

8 (a) Upon written authorization to do so by the applicant . ~~{or, if}~~

9 (b) If an application is protested . ~~±, by the protestant and the~~
10 applicant.

11 ~~—(b) Postpone action if}~~

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

14 ~~{(c)}~~ (d) In areas where studies of water supplies have been
15 determined to be necessary by the State Engineer pursuant to NRS
16 533.368 . ~~{or where}~~

17 (e) Where court actions or adjudications are pending, ~~{withhold~~
18 action until it is determined there is unappropriated water or the
19 court action becomes final.

20 ~~—3.}~~ which may affect the outcome of the application.

21 (f) In areas in which adjudication of vested water rights is
22 deemed necessary by the State Engineer.

23 (g) On an application for a permit to change a vested water
24 right in a basin where vested water rights have not been
25 adjudicated.

26 (h) Where authorized entry to any land needed to use the water
27 for which the application is submitted is required from a
28 governmental agency.

29 (i) On an application for which the State Engineer has
30 required additional information pursuant to NRS 533.375.

31 5. If the State Engineer does not act upon an application in
32 accordance with subsections 4 and 6, the application remains
33 active until approved or rejected by the State Engineer.

34 6. Except as otherwise provided in this subsection and
35 subsection ~~{11}~~ 10, the State Engineer shall approve or reject,
36 within 6 months after the final date for filing a protest, an
37 application filed to change the point of diversion of water already
38 appropriated when the existing and proposed points of diversion are
39 on the same property for which the water has already been
40 appropriated under the existing water right or the proposed point of
41 diversion is on real property that is proven to be owned by the
42 applicant and is contiguous to the place of use of the existing water
43 right. The State Engineer may ~~±~~:



1 ~~—(a) Postpone action upon written authorization to do so by the~~
2 ~~applicant or, if the application is protested, by the protestant and the~~
3 ~~applicant.~~

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

9 ~~—4.] postpone action on the application pursuant to subsection 4.~~

10 7. If the State Engineer *has not approved, rejected or held a*
11 *hearing on* ~~{does not act upon}~~ an application within ~~{1 year}~~ *7*
12 *years* after the final date for filing a protest, the ~~{application remains~~
13 ~~active until acted upon by the}~~ State Engineer ~~{.] shall cause notice~~
14 *of the application to be republished pursuant to NRS 533.360*
15 *immediately preceding the time at which the State Engineer is*
16 *ready to approve or reject the application. The cost of the*
17 *republishing must be paid by the applicant. After such*
18 *republishing, a protest may be filed in accordance with*
19 *NRS 533.365.*

20 ~~{5. Except as otherwise provided in subsection 11, where there~~
21 ~~is no unappropriated water in the proposed source of supply, or~~
22 ~~where its proposed use or change conflicts with existing rights or~~
23 ~~with protectable interests in existing domestic wells as set forth in~~
24 ~~NRS 533.024, or threatens to prove detrimental to the public~~
25 ~~interest, the State Engineer shall reject the application and refuse to~~
26 ~~issue the requested permit. If a previous application for a similar use~~
27 ~~of water within the same basin has been rejected on those grounds,~~
28 ~~the new application may be denied without publication.~~

29 ~~—6. In determining whether an application for an interbasin~~
30 ~~transfer of groundwater must be rejected pursuant to this section, the~~
31 ~~State Engineer shall consider:~~

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

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

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

40 ~~—(d) Whether the proposed action is an appropriate long term use~~
41 ~~which will not unduly limit the future growth and development in~~
42 ~~the basin from which the water is exported; and~~

43 ~~—(e) Any other factor the State Engineer determines to be~~
44 ~~relevant.~~



1 ~~—7.]~~ 8. If a hearing is held regarding an application, the decision
2 of the State Engineer must be in writing and include findings of fact,
3 conclusions of law and a statement of the underlying facts
4 supporting the findings of fact. The written decision may take the
5 form of a transcription of an oral ruling. The rejection or approval of
6 an application must be endorsed on a copy of the original
7 application, and a record must be made of the endorsement in the
8 records of the State Engineer. The copy of the application so
9 endorsed must be returned to the applicant. Except as otherwise
10 provided in subsection ~~{12.]~~ 11, if the application is approved, the
11 applicant may, on receipt thereof, proceed with the construction of
12 the necessary works and take all steps required to apply the water to
13 beneficial use and to perfect the proposed appropriation. If the
14 application is rejected, the applicant may take no steps toward the
15 prosecution of the proposed work or the diversion and use of
16 the public water while the rejection continues in force.

17 ~~{8. —If:~~

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

21 ~~—(b) The application involves an amount of water exceeding 250~~
22 ~~acre-feet per annum;~~

23 ~~—(c) The application involves an interbasin transfer of~~
24 ~~groundwater; and~~

25 ~~—(d) Within 7 years after the date of last publication of the notice~~
26 ~~of application, the State Engineer has not granted the application,~~
27 ~~denied the application, held an administrative hearing on the~~
28 ~~application or issued a permit in response to the application,~~

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

36 ~~—9. Except as otherwise provided in subsection 10, a person who~~
37 ~~is a successor in interest to a protestant or an affected water right~~
38 ~~owner who wishes to protest an application in accordance with a~~
39 ~~new period of protest noticed pursuant to subsection 8 shall, within~~
40 ~~45 days after the date on which the notification was entered and~~
41 ~~mailed, file with the State Engineer a written protest that complies~~
42 ~~with the provisions of this chapter and with the regulations adopted~~
43 ~~by the State Engineer, including, without limitation, any regulations~~
44 ~~prescribing the use of particular forms or requiring the payment of~~
45 ~~certain fees.~~



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~~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 protest, the successor in interest must notify the State Engineer *in a timely manner* on a form provided by the State Engineer.

~~[11.]~~ 10. The provisions of subsections 1 to ~~[6.]~~ 9, inclusive, do not apply to an application for an environmental permit.

~~[12.]~~ 11. The provisions of subsection ~~[7.]~~ 8 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.

~~[13.]~~ 12. As used in this section ~~[-]~~
~~(a) "County of origin" means the county from which groundwater is transferred or proposed to be transferred.~~

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

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

533.3703 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.]~~ 2 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. 5. NRS 534.270 is hereby amended to read as follows:

534.270 1. Upon receipt of an application for a permit to operate a project, the State Engineer shall endorse on the application the date it was received and keep a record of the application. The State Engineer shall conduct an initial review of the application within 45 days after receipt of the application. If the State Engineer determines in the initial review that the application is incomplete, the State Engineer shall notify the applicant. The application is incomplete until the applicant files all the information requested in the application. The State Engineer shall determine whether the



1 application is correct within 180 days after receipt of a complete
2 application. The State Engineer may request additional information
3 from the applicant. The State Engineer may conduct such
4 independent investigations as are necessary to determine whether
5 the application should be approved or rejected.

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

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

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

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

19 (d) The date of the last publication;

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

23 (f) The name of the applicant; and

24 (g) That a protest must:

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

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

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

30 3. A protest to a proposed project:

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

33 (b) Must be in writing;

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

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

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

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

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

43 4. Upon receipt of a protest, the State Engineer shall advise the
44 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 ~~(e)~~ (d) of subsection ~~4~~ 4 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 ~~4~~ 3 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



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1 1 by the Commission or by any entity to whom or with whom the
2 Commission has contracted the water is not subject to regulation by
3 the State Engineer.

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

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

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

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

15 1. An application to appropriate water filed before July 1,
16 2011; or

17 2. An application to change the place of diversion, manner of
18 use or place of use of appropriated water filed before July 1, 2011.

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

