

SENATE BILL NO. 361—SENATOR RHODS

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Authorizes the issuance of a temporary permit to appropriate water to establish fire-resistant vegetative cover in certain areas. (BDR 48-285)

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; authorizing the issuance of a temporary permit to appropriate water to establish fire-resistant vegetative cover in certain areas; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill authorizes a person to apply to the State Engineer for the issuance of a temporary permit to appropriate water to establish vegetative cover that is resistant to fire in an area that has been burned by a wildfire or to prevent or reduce the impact of a wildfire in an area. Unless extended by the State Engineer, the duration of such a temporary permit is limited to one growing season of the vegetative cover. **Section 2** of this bill declares the use of water to prevent or reduce the impact of wildfires or to rehabilitate areas burned by wildfires as a policy of the State.

Sections 3-7 of this bill exempt an application for such a temporary permit from several requirements in existing law for applications for permits concerning water rights, including publication of notice of the application in a newspaper and authorization for the filing of protests against the granting of the application. This expedited process is similar to the process for the issuance of environmental permits by the State Engineer. (NRS 533.437-533.4377)

Section 8 of this bill requires the State Forester Firewarden, upon the request of the State Engineer, to review the plan for establishing the vegetative cover that is required to be submitted by the applicant for the temporary permit.



* S B 3 6 1 *

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

Section 1. Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person may apply for a temporary permit to appropriate water to establish vegetative cover that is resistant to fire in an area that has been burned by a wildfire or to prevent or reduce the impact of a wildfire in an area.

2. In addition to the information required by NRS 533.335, an applicant for a temporary permit shall submit to the State Engineer:

(a) A plan for establishing vegetative cover that is resistant to fire in the area;

(b) Any other information which is necessary for a full understanding of the necessity of the appropriation; and

(c) For:

(1) Examining and filing the application for the temporary permit, \$150.

(2) Issuing and recording the temporary permit, \$200.

3. The State Engineer may forward a plan submitted pursuant to subsection 2 to the State Forester Firewarden for his or her review and comments.

4. The State Engineer shall approve an application for a temporary permit if:

(a) The application is accompanied by the prescribed fees;

(b) The appropriation is in the public interest; and

(c) The appropriation does not impair water rights held by other persons.

5. A temporary permit issued pursuant to this section must not exceed in duration one growing season for the vegetative cover but may be extended by the State Engineer in increments not to exceed a growing season.

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

533.024 The Legislature declares that:

1. It is the policy of this State:

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

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



(c) 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.

(d) To encourage and promote the use of water to prevent or reduce the spread of wildfire or to rehabilitate areas burned by wildfire, including, without limitation, through the establishment of vegetative cover that is resistant to fire.

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

Sec. 3. NRS 533.360 is hereby amended to read as follows:

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

(a) That the application has been filed.

(b) The date of the filing.

(c) The name and address of the applicant.

(d) The name of the source from which the appropriation is to be made.

(e) The location of the place of diversion, described by legal subdivision or metes and bounds and by a physical description of that place of diversion.

(f) The purpose for which the water is to be appropriated.

➔ The publisher shall add thereto the date of the first publication and the date of the last publication.

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

3. If the application is for a proposed well:

(a) For municipal, quasi-municipal or industrial use; and

(b) Whose reasonably expected rate of diversion is one-half cubic foot per second or more,

➔ the applicant shall mail a copy of the notice of application to each owner of real property containing a domestic well that is within



2,500 feet of the proposed well, to the owner's address as shown in the latest records of the county assessor. If there are not more than six such wells, notices must be sent to each owner by certified mail, return receipt requested. If there are more than six such wells, at least six notices must be sent to owners by certified mail, return receipt requested. The return receipts from these notices must be filed with the State Engineer before the State Engineer may consider the application.

4. The provisions of this section do not apply to an environmental permit ~~or~~ *or a temporary permit issued pursuant to section 1 of this act.*

Sec. 4. NRS 533.363 is hereby amended to read as follows:

533.363 1. Except as otherwise provided in subsection 2, if water for which a permit is requested is to be used in a county other than that county in which it is to be appropriated, or is to be diverted from or used in a different county than that in which it is currently being diverted or used, then the State Engineer shall give notice of the receipt of the request for the permit to:

(a) The board of county commissioners of the county in which the water for which the permit is requested will be appropriated or is currently being diverted or used; and

(b) The board of county commissioners of the county in which the water will be diverted or used.

2. The provisions of subsection 1 do not apply:

(a) To an environmental permit ~~or~~ *or a temporary permit issued pursuant to section 1 of this act.*

(b) If:

(1) The water is to be appropriated and used; or

(2) Both the current and requested place of diversion or use of the water are,

↳ within a single, contiguous parcel of real property.

3. A person who requests a permit to which the provisions of subsection 1 apply shall submit to each appropriate board of county commissioners a copy of the application and any information relevant to the request.

4. Each board of county commissioners which is notified of a request for a permit pursuant to this section shall consider the request at the next regular or special meeting of the board held not earlier than 3 weeks after the notice is received. The board shall provide public notice of the meeting for 3 consecutive weeks in a newspaper of general circulation in its county. The notice must state the time, place and purpose of the meeting. At the conclusion of the meeting the board may recommend a course of action to the State Engineer, but the recommendation is not binding on the State Engineer.



Sec. 5. 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 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 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.

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

7. 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, 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



1 beneficial use and to perfect the proposed appropriation. If the
2 application is rejected, the applicant may take no steps toward the
3 prosecution of the proposed work or the diversion and use of
4 the public water while the rejection continues in force.

5 8. If:

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

9 (b) The application involves an amount of water exceeding 250
10 acre-feet per annum;

11 (c) The application involves an interbasin transfer of
12 groundwater; and

13 (d) Within 7 years after the date of last publication of the notice
14 of application, the State Engineer has not granted the application,
15 denied the application, held an administrative hearing on the
16 application or issued a permit in response to the application,
17 the State Engineer shall notice a new period of 45 days in which
18 a person who is a successor in interest to a protestant or an affected
19 water right owner may file with the State Engineer a written protest
20 against the granting of the application. Such notification must be
21 entered on the Internet website of the State Engineer and must,
22 concurrently with that notification, be mailed to the board of county
23 commissioners of the county of origin.

24 9. Except as otherwise provided in subsection 10, a person who
25 is a successor in interest to a protestant or an affected water right
26 owner who wishes to protest an application in accordance with a
27 new period of protest noticed pursuant to subsection 8 shall, within
28 45 days after the date on which the notification was entered and
29 mailed, file with the State Engineer a written protest that complies
30 with the provisions of this chapter and with the regulations adopted
31 by the State Engineer, including, without limitation, any regulations
32 prescribing the use of particular forms or requiring the payment of
33 certain fees.

34 10. If a person is the successor in interest of an owner of a
35 water right or an owner of real property upon which a domestic well
36 is located and if the former owner of the water right or real property
37 on which a domestic well is located had previously filed a written
38 protest against the granting of an application, the successor in
39 interest must be allowed to pursue that protest in the same manner
40 as if the successor in interest were the former owner whose interest
41 he or she succeeded. If the successor in interest wishes to pursue the
42 protest, the successor in interest must notify the State Engineer on a
43 form provided by the State Engineer.



11. The provisions of subsections 1 to 6, inclusive, do not apply to an application for an environmental permit ~~or~~ *or a temporary permit issued pursuant to section 1 of this act.*

12. The provisions of subsection 7 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. As used in this section:

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

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

Sec. 6. NRS 533.380 is hereby amended to read as follows:

533.380 1. Except as otherwise provided in subsection 5, in an 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, 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 the State Engineer, but a single extension of time for a municipal or



1 quasi-municipal use for a public water system, as defined in NRS
2 445A.235, must not exceed 5 years, and any other single extension
3 of time must not exceed 1 year. An application for the extension
4 must in all cases be:

5 (a) Made within 30 days following notice by registered or
6 certified mail that proof of the work is due as provided for in NRS
7 533.390 and 533.410; and

8 (b) Accompanied by proof and evidence of the reasonable
9 diligence with which the applicant is pursuing the perfection of the
10 application.

11 ➡ The State Engineer shall not grant an extension of time unless the
12 State Engineer determines from the proof and evidence so submitted
13 that the applicant is proceeding in good faith and with reasonable
14 diligence to perfect the application. The failure to provide the proof
15 and evidence required pursuant to this subsection is prima facie
16 evidence that the holder is not proceeding in good faith and with
17 reasonable diligence to perfect the application.

18 4. Except as otherwise provided in subsection 5 and NRS
19 533.395, whenever the holder of a permit issued for any municipal
20 or quasi-municipal use of water on any land referred to in paragraph
21 (b) of subsection 1, or for any use which may be served by a county,
22 city, town, public water district or public water company, requests
23 an extension of time to apply the water to a beneficial use, the State
24 Engineer shall, in determining whether to grant or deny the
25 extension, consider, among other factors:

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

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

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

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

39 (e) The period contemplated in the:

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

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

44 ➡ if any, for completing the development of the land.



5. The provisions of subsections 1 and 4 do not apply to an environmental permit ~~H~~ *or a temporary permit issued pursuant to section 1 of this act.*

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

Sec. 7. NRS 533.400 is hereby amended to read as follows:

533.400 1. Except as otherwise provided in subsection 2, on or before the date set in the endorsement of a permit for the application of water to beneficial use, or on the date set by the State Engineer under a proper application for extension therefor, any person holding a permit from the State Engineer to appropriate the public waters of the State of Nevada, to change the place of diversion or the manner or place of use, shall file with the State Engineer a statement under oath, on a form prescribed by the State Engineer. The statement must include:

(a) The name and post office address of the person making the proof.

(b) The number and date of the permit for which proof is made.

(c) The source of the water supply.

(d) The name of the canal or other works by which the water is conducted to the place of use.

(e) The name of the original person to whom the permit was issued.

(f) The purpose for which the water is used.

(g) If for irrigation, the actual number of acres of land upon which the water granted in the permit has been beneficially used, giving the same by 40-acre legal subdivisions when possible.

(h) An actual measurement taken by a licensed state water right surveyor or an official or employee of the Office of the State Engineer of the water diverted for beneficial use.

(i) The capacity of the works of diversion.

(j) If for power, the dimensions and capacity of the flume, pipe, ditch or other conduit.

(k) The average grade and difference in elevation between the termini of any conduit.

(l) The number of months, naming them, in which water has been beneficially used.

(m) The amount of water beneficially used, taken from actual measurements, together with such other data as the State Engineer



1 may require to become acquainted with the amount of the
2 appropriation for which the proof is filed.

3 2. The provisions of subsection 1 do not apply to a person
4 holding an environmental permit ~~or~~ *or a temporary permit issued*
5 *pursuant to section 1 of this act.*

6 **Sec. 8.** NRS 472.040 is hereby amended to read as follows:

7 472.040 1. The State Forester Firewarden shall:

8 (a) Supervise or coordinate all forestry and watershed work on
9 state-owned and privately owned lands, including fire control, in
10 Nevada, working with federal agencies, private associations,
11 counties, towns, cities or private persons.

12 (b) Administer all fire control laws and all forestry laws in
13 Nevada outside of townsite boundaries, and perform any other
14 duties designated by the Director of the State Department of
15 Conservation and Natural Resources or by state law.

16 (c) Assist and encourage county or local fire protection districts
17 to create legally constituted fire protection districts where they are
18 needed and offer guidance and advice in their operation.

19 (d) Designate the boundaries of each area of the State where the
20 construction of buildings on forested lands creates such a fire hazard
21 as to require the regulation of roofing materials.

22 (e) Adopt and enforce regulations relating to standards for fire
23 retardant roofing materials to be used in the construction, alteration,
24 change or repair of buildings located within the boundaries of fire
25 hazardous forested areas.

26 (f) Purchase communication equipment which can use the
27 microwave channels of the state communications system and store
28 this equipment in regional locations for use in emergencies.

29 (g) Administer money appropriated and grants awarded for fire
30 prevention, fire control and the education of firefighters and award
31 grants of money for those purposes to fire departments and
32 educational institutions in this State.

33 (h) Determine the amount of wages that must be paid to
34 offenders who participate in conservation camps and who perform
35 work relating to fire fighting and other work projects of
36 conservation camps.

37 (i) Cooperate with the State Fire Marshal in the enforcement of
38 all laws and the adoption of regulations relating to the prevention of
39 fire through the management of vegetation in counties located
40 within or partially within the Lake Tahoe Basin and the Lake Mead
41 Basin.

42 (j) Assess the codes, rules and regulations which are adopted by
43 other agencies that have specific regulatory authority within the
44 Lake Tahoe Basin and the Lake Mead Basin, and which are not



1 subject to the authority of a state or local fire agency, for
2 consistency with fire codes, rules and regulations.

3 (k) Ensure that any adopted regulations are consistent with those
4 of fire protection districts created pursuant to chapter 318, 473 or
5 474 of NRS.

6 *(l) Upon the request of the State Engineer, review a plan*
7 *submitted with an application for the issuance of a temporary*
8 *permit pursuant to section 1 of this act.*

9 2. The State Forester Firewarden in carrying out the provisions
10 of this chapter may:

11 (a) Appoint paid foresters and firewardens to enforce the
12 provisions of the laws of this State respecting forest and watershed
13 management or the protection of forests and other lands from fire,
14 subject to the approval of the board of county commissioners of
15 each county concerned.

16 (b) Appoint suitable citizen-wardens. Citizen-wardens serve
17 voluntarily except that they may receive compensation when an
18 emergency is declared by the State Forester Firewarden.

19 (c) Appoint, upon the recommendation of the appropriate federal
20 officials, resident officers of the United States Forest Service and
21 the United States Bureau of Land Management as voluntary
22 firewardens. Voluntary firewardens are not entitled to compensation
23 for their services.

24 (d) Appoint certain paid foresters or firewardens to be arson
25 investigators.

26 (e) Employ, with the consent of the Director of the State
27 Department of Conservation and Natural Resources, clerical
28 assistance, county and district coordinators, patrol officers,
29 firefighters, and other employees as needed, and expend such sums
30 as may be necessarily incurred for this purpose.

31 (f) Purchase, or acquire by donation, supplies, material,
32 equipment and improvements necessary to fire protection and forest
33 and watershed management.

34 (g) With the approval of the Director of the State Department of
35 Conservation and Natural Resources and the State Board of
36 Examiners, purchase or accept the donation of real property to be
37 used for lookout sites and for other administrative, experimental or
38 demonstration purposes. No real property may be purchased or
39 accepted unless an examination of the title shows the property to be
40 free from encumbrances, with title vested in the grantor. The title
41 to the real property must be examined and approved by the Attorney
42 General.

43 (h) Expend any money appropriated by the State to the Division
44 of Forestry of the State Department of Conservation and Natural



1 Resources for paying expenses incurred in fighting fires or in
2 emergencies which threaten human life.

3 3. The State Forester Firewarden, in carrying out the powers
4 and duties granted in this section, is subject to administrative
5 supervision by the Director of the State Department of Conservation
6 and Natural Resources.

7 **Sec. 9.** This act becomes effective upon passage and approval.

