

SENATE BILL NO. 133—SENATORS GOICOECHEA
AND GUSTAVSON (BY REQUEST)

FEBRUARY 18, 2013

JOINT SPONSORS: ASSEMBLYMEN GRADY; AND ELLISON

Referred to Committee on Natural Resources

SUMMARY—Requires the State Engineer to allow a county to participate in an advisory capacity in the development and implementation of a plan relating to the appropriation of water for beneficial use under certain circumstances. (BDR 48-631)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to water; requiring the State Engineer to allow a county to participate in an advisory capacity in the development and implementation of a plan relating to the appropriation of water for beneficial use under certain circumstances; requiring the State Engineer to consider any comment, analysis or other information submitted by a participating county before approving the plan and during the period in which the plan, if approved, is carried out; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The State Engineer, an appointee of the Director of the State Department of
2 Conservation and Natural Resources, manages the appropriation of water in this
3 State. (Title 48 of NRS) This bill requires the State Engineer to allow a county to
4 participate in an advisory capacity in the development and implementation of a plan
5 required by the State Engineer relating to the appropriation of water for beneficial
6 use if the county where the State Engineer has approved the point of diversion
7 requests to participate. This bill also requires the State Engineer to consider any
8 comment, analysis or other information submitted to the State Engineer by the
9 county before approving the plan and during the period in which the plan, if
10 approved, is carried out. Finally, this bill exempts from judicial review a decision



11 by the State Engineer whether or not to include in the plan or to follow any
12 comment, analysis or other information submitted by a participating county.

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

1 **Section 1.** Chapter 532 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. For each new application to appropriate water for a*
4 *beneficial use filed on or after January 1, 2012, if the State*
5 *Engineer requires a monitoring, management and mitigation plan*
6 *as a condition of appropriating water for a beneficial use, the*
7 *State Engineer shall, within 30 days after requiring the plan and if*
8 *requested by the county where the State Engineer has approved*
9 *the point of diversion, allow the county to participate in an*
10 *advisory capacity in the development and implementation of the*
11 *plan.*

12 *2. Before approving any plan developed pursuant to*
13 *subsection 1 and during the period in which the plan, if approved,*
14 *is carried out, the State Engineer shall consider any comment,*
15 *analysis or other information submitted by the participating*
16 *county. The State Engineer is not required to include any*
17 *comment, analysis or other information submitted by a*
18 *participating county in a monitoring, management and mitigation*
19 *plan required pursuant to this section.*

20 *3. A decision by the State Engineer whether or not to include*
21 *in the plan or to follow any comment, analysis or other*
22 *information submitted by a participating county pursuant to this*
23 *section is not subject to judicial review pursuant to NRS 533.450.*

24 **Sec. 2.** NRS 533.450 is hereby amended to read as follows:

25 533.450 1. ~~Any~~ *Except as otherwise provided in section 1*
26 *of this act, any* person feeling aggrieved by any order or decision of
27 the State Engineer, acting in person or through the assistants of the
28 State Engineer or the water commissioner, affecting the person's
29 interests, when the order or decision relates to the administration of
30 determined rights or is made pursuant to NRS 533.270 to 533.445,
31 inclusive, or NRS 533.481, 534.193, 535.200 or 536.200, may have
32 the same reviewed by a proceeding for that purpose, insofar as may
33 be in the nature of an appeal, which must be initiated in the proper
34 court of the county in which the matters affected or a portion thereof
35 are situated, but on stream systems where a decree of court has been
36 entered, the action must be initiated in the court that entered the
37 decree. The order or decision of the State Engineer remains in full
38 force and effect unless proceedings to review the same are



1 commenced in the proper court within 30 days after the rendition of
2 the order or decision in question and notice thereof is given to the
3 State Engineer as provided in subsection 3.

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

7 3. No such proceedings may be entertained unless notice
8 thereof, containing a statement of the substance of the order or
9 decision complained of, and of the manner in which the same
10 injuriously affects the petitioner's interests, has been served upon
11 the State Engineer, personally or by registered or certified mail, at
12 the Office of the State Engineer at the State Capital within 30 days
13 following the rendition of the order or decision in question. A
14 similar notice must also be served personally or by registered or
15 certified mail upon the person who may have been affected by the
16 order or decision.

17 4. Where evidence has been filed with, or testimony taken
18 before, the State Engineer, a transcribed copy thereof, or of any
19 specific part of the same, duly certified as a true and correct
20 transcript in the manner provided by law, must be received in
21 evidence with the same effect as if the reporter were present and
22 testified to the facts so certified. A copy of the transcript must be
23 furnished on demand, at actual cost, to any person affected by the
24 order or decision, and to all other persons on payment of a
25 reasonable amount therefor, to be fixed by the State Engineer.

26 5. An order or decision of the State Engineer must not be
27 stayed unless the petitioner files a written motion for a stay with the
28 court and serves the motion personally or by registered or certified
29 mail upon the State Engineer, the applicant or other real party in
30 interest and each party of record within 10 days after the petitioner
31 files the petition for judicial review. Any party may oppose the
32 motion and the petitioner may reply to any such opposition. In
33 determining whether to grant or deny the motion for a stay, the court
34 shall consider:

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

37 (b) Whether the petitioner may incur any irreparable harm if the
38 stay is denied;

39 (c) The likelihood of success of the petitioner on the merits; and

40 (d) Any potential harm to the members of the public if the stay
41 is granted.

42 6. Except as otherwise provided in this subsection, the
43 petitioner must file a bond in an amount determined by the court,
44 with sureties satisfactory to the court and conditioned in the manner
45 specified by the court. The bond must be filed within 5 days after



* S B 1 3 3 R 1 *

1 the court determines the amount of the bond pursuant to this
2 subsection. If the petitioner fails to file the bond within that period,
3 the stay is automatically denied. A bond must not be required for a
4 public agency of this State or a political subdivision of this State.

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

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

9 9. Appeals may be taken to the Supreme Court from the
10 judgment of the district court in the same manner as in other civil
11 cases.

12 10. The decision of the State Engineer is prima facie correct,
13 and the burden of proof is upon the party attacking the same.

14 11. Whenever it appears to the State Engineer that any
15 litigation, whether now pending or hereafter brought, may adversely
16 affect the rights of the public in water, the State Engineer shall
17 request the Attorney General to appear and protect the interests of
18 the State.

19 **Sec. 3.** This act becomes effective upon passage and approval.

