

ASSEMBLY BILL NO. 62—COMMITTEE ON NATURAL
RESOURCES, AGRICULTURE, AND MINING

(ON BEHALF OF THE DIVISION OF WATER RESOURCES
OF THE STATE DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES)

PREFILED NOVEMBER 19, 2018

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions related to water. (BDR 48-215)

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

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

AN ACT relating to water; authorizing, under certain circumstances, the State Engineer to grant an additional extension of time for the completion of work for the diversion of water to projects that include the municipal or quasi-municipal use of water; revising the time period for which the State Engineer may grant an extension for the completion of work for the diversion of water; authorizing, under certain circumstances, the State Engineer to suspend the limitation of time for the completion of work set forth in a permit or an extension previously granted; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Upon approving an application for a permit to appropriate water, existing law authorizes the State Engineer to extend, under certain circumstances, the deadline by which construction related to the appropriation of water or the application of water to a beneficial use must be completed or made. With limited exceptions, any number of extensions may be granted, but a single extension may not exceed 5 years. (NRS 533.380, 533.390, 533.410)

Section 1 of this bill authorizes the State Engineer to grant an additional extension of time for the completion of work for the diversion of water to the holder of a permit for a project that includes the municipal or quasi-municipal use of water if: (1) the applicant has adopted a capital improvement plan that is consistent with a water resource plan adopted by a county, city or water authority;



and (2) the applicant is able to demonstrate that the amount of time he or she expects to complete construction of the works is reasonable and that he or she has the financial ability to complete construction.

Section 2 of this bill revises the provisions relating to extending the deadline by which construction related to the appropriation of water must be completed. If a permit has been issued for a project that includes the municipal or quasi-municipal use of water, the State Engineer may grant one or more extensions, but, with limited exception, the total number of extensions may not extend the construction deadline for more than 15 years. If a permit has been issued for a project that is not a municipal or quasi-municipal use and that includes the diversion of 2 or more cubic feet of water per second or the cultivation of at least 100 acres of land, the State Engineer may grant one or more extensions, but the total number of extensions may not extend the construction deadline for more than 10 years. If a permit has been issued for any other purpose, the State Engineer may grant one or more extensions, but the total number of extensions may not extend the construction deadline for more than 5 years.

Section 2 also authorizes the State Engineer to suspend the limitation of time for the completion of construction set forth in a permit or any extension if the permit holder submits sufficient proof to the State Engineer demonstrating that the person has been unable to complete the work because of certain pending administrative or court actions. **Section 2** further provides that the State Engineer may grant any number of suspensions, but a single suspension may not exceed 2 years.

Sections 1.5 and 3 of this bill make conforming changes.

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. In addition to any extensions granted pursuant to NRS 533.390, the State Engineer may grant a single extension of time to file the proof of completion of work for a project that includes the municipal or quasi-municipal use of water if the governing body of a county or city in which the place of use for the project is located or the water authority that serves the area in which the place of use for the project is located has adopted a water resource plan, that includes, without limitation:

(a) The identification of all known sources of surface water, groundwater and effluent that are physically and legally available for use in the community.

(b) An analysis of the:

(1) Existing demand for water in the community; and

(2) Expected demand for water in the community caused by projected growth.

(c) An analysis of whether the sources of water identified in paragraph (a) are of sufficient quality and quantity to satisfy the existing and expected demands described in paragraph (a).



(d) If the analysis pursuant to paragraph (c) determines that the sources of water identified in paragraph (a) are not of sufficient quality or quantity to satisfy demands, a plan for obtaining additional water of sufficient quality and quantity.

2. To request an extension of time pursuant to subsection 1, a holder of a permit must submit to the State Engineer an application for an extension of time within 30 days after receiving notice by registered or certified mail that proof of work is due as provided for in NRS 533.390 and 533.410. The application must include, without limitation:

(a) A capital improvement plan for the project in accordance with the requirements of subsection 3; and

(b) Evidence that the capital improvement plan is consistent with a water resource plan adopted by the governing body of a county or city or a water authority that meets the requirements of subsection 1.

3. A capital improvement plan must include, without limitation:

(a) An evaluation of the supply, distribution, condition of existing facilities and operation and maintenance programs of the water system of the applicant;

(b) A description of the construction work necessary to complete the works of diversion, system of conveyance or any associated facilities necessary to apply the water to beneficial use;

(c) A demonstration that the works and any associated facilities included in the project are capable of conveying the water to the place of use;

(d) A demonstration that:

(1) There is sufficient funding available to the applicant to complete construction of the project; or

(2) If the project is composed of several features, the applicant has the financial ability and reasonable expectations to complete construction of all features of the project; and

(e) Any additional information requested by the State Engineer.

4. In determining whether to grant or deny a request for an extension pursuant to subsection 1, the State Engineer:

(a) Shall consider the requirements set forth in NRS 533.380; and

(b) May consider:

(1) The reasonableness of the amount of time the applicant expects to complete construction of the works and any associated facilities;



(2) *The reasonableness of the financial ability of the applicant to complete construction of the works and any associated facilities;*

(3) *Whether, at the time the applicant requested the extension, the applicant had available funding to complete construction of the works and any associated facilities; and*

(4) *Any other factor presented by the applicant to demonstrate that he or she has a reasonable and certain time frame for completing construction of the works and any associated facilities.*

5. *The State Engineer may approve or deny a request for an extension pursuant to this section following a public hearing on the request. The State Engineer must provide reasonable notice of such public hearing. If, following the public hearing, the State Engineer determines that the applicant has not demonstrated that the applicant:*

(a) *Expects to complete construction of the works and any associated facilities within a reasonable amount of time; or*

(b) *Has the financial ability to complete construction of the works of diversion and any associated facilities,*

↳ the State Engineer shall deny the application for an extension requested pursuant to this section.

Sec. 1.5. 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]~~ *extend the* 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 must not exceed 5 years.]~~ *in accordance with the provisions of this section and NRS 533.390 and 533.410 and section 1 of this act.* An application for the extension must in all cases be:

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

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

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

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

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

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

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

(d) Any delays in the development of the land or the area being served by the county, city, town, public water district or public



1 water company which were caused by unanticipated natural
2 conditions; and

3 (e) The period contemplated in the:

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

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

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

9 5. The provisions of subsections 1 and 4 do not apply to an
10 environmental permit or a temporary permit issued pursuant to NRS
11 533.436 or 533.504.

12 6. For the purposes of this section, the measure of reasonable
13 diligence is the steady application of effort to perfect the application
14 in a reasonably expedient and efficient manner under all the facts
15 and circumstances. When a project or integrated system is
16 composed of several features, work on one feature of the project or
17 system may be considered in finding that reasonable diligence has
18 been shown in the development of water rights for all features of the
19 entire project or system.

20 **Sec. 2.** NRS 533.390 is hereby amended to read as follows:

21 533.390 1. Any person holding a permit from the State
22 Engineer shall, on or before the date set for the completion of the
23 work, file in detail a description of the work as actually constructed.
24 This statement must be verified by the affidavit of the applicant or
25 the applicant's agent or attorney.

26 2. Should any person holding a permit from the State Engineer
27 fail to file with the State Engineer the proof of completion of work,
28 as provided in this chapter, the State Engineer shall advise the
29 holder of the permit, by registered or certified mail, that it is held for
30 cancellation, and should the holder, within 30 days after the mailing
31 of such advice, fail to file the required affidavit, the State Engineer
32 shall cancel the permit. For good cause shown, upon application
33 made prior to the expiration of the 30-day period, the State Engineer
34 may, in his or her discretion, grant ~~an extension~~ **one or more**
35 **extensions** of time in which to file the instruments. ***If a permit has***
36 ***been issued for:***

37 ***(a) A project that includes the municipal or quasi-municipal***
38 ***use of water, except as otherwise provided in section 1 of this act,***
39 ***the State Engineer may extend the deadline for the completion of***
40 ***work for not more than 15 years from the date set for the***
41 ***completion of the work. In addition to the requirements set forth***
42 ***in NRS 533.380, the person holding the permit must demonstrate***
43 ***to the State Engineer that:***

44 ***(1) Additional time is necessary to organize the financing***
45 ***and construction of the work due to the size of the project; and***



(2) The person has spent at least \$50,000 on the construction of the work, including, without limitation, expenditures for the purchase of rights-of-way or property.

(b) A project that does not include the municipal or quasi-municipal use of water and includes the diversion of 2 or more cubic feet of water per second or the cultivation of 100 acres of land or more, the State Engineer may extend the deadline for the completion of work for not more than 10 years from the date set for the completion of the work in the permit.

(c) Any other purpose, the State Engineer may extend the deadline for the completion of work for not more than 5 years from the date set for the completion of the work in the permit.

3. The limitation of time for the completion of work set forth in a permit or an extension granted pursuant to this section may be temporarily suspended by the State Engineer if, at the time that proof of completion of work is due pursuant to the permit or an extension, as applicable, the person holding the permit submits to the State Engineer sufficient proof that the person has been unable to complete the work because of a pending:

(a) Application with the Federal Government, the State, a local government or a tribal government for some type of consent or approval that is necessary to complete construction of the project, including, without limitation, a right-of-way or any permit or other approval related to development of land.

(b) Court action or adjudication which may affect the person's water rights which are involved in the project.

➔ The person holding the permit is not required to submit an application or fee for an extension in order for the State Engineer to temporarily suspend the limitation of time for completion of the work pursuant to this subsection.

4. The State Engineer may grant any number of suspensions pursuant to subsection 3, but a single suspension of time must not exceed 2 years.

5. As used in this section, "tribal government" means a federally recognized American Indian tribe pursuant to 25 C.F.R. §§ 83.1 to 83.13, inclusive.

Sec. 3. NRS 533.410 is hereby amended to read as follows:

533.410 If any holder of a permit from the State Engineer fails, before the date set for filing in the permit or the date set by any extension granted by the State Engineer, to file with the State Engineer proof of application of water to beneficial use, and the accompanying map, if a map is required, the State Engineer shall advise the holder of the permit, by registered or certified mail, that the permit is held for cancellation. If the holder, within 30 days after the mailing of this notice, fails to file with the State Engineer the



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1 required affidavit and map, if a map is required, or an application
2 for an extension of time to file the instruments, the State Engineer
3 shall cancel the permit. For good cause shown, upon application
4 made before the expiration of the 30-day period, the State Engineer
5 may grant an extension of time in which to file the instruments. *The*
6 *State Engineer may grant any number of extensions pursuant to*
7 *this section but a single extension of time must not exceed 5 years.*
8 **Sec. 4.** This act becomes effective upon passage and approval.

