

SENATE BILL NO. 140—COMMITTEE ON NATURAL RESOURCES

FEBRUARY 11, 2019

Referred to Committee on Natural Resources

SUMMARY—Revises provisions relating to the appropriation of water in certain basins. (BDR 48-541)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

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 reserve a certain percentage of the remaining water available for appropriation in certain basins; prohibiting the appropriation of such water; authorizing the use of such water in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, any person who wishes to appropriate any waters of this State must apply to the State Engineer for a permit to do so and the State Engineer must reject an application under certain circumstances, including when there is no unappropriated water available in the proposed source of supply. (NRS 533.325, 533.370, 533.371) **Section 1** of this bill requires the State Engineer, in any basin in which there is water available for appropriation on July 1, 2019, to reserve 10 percent of the total remaining water. The water reserved by the State Engineer may only be used on a temporary basis in an emergency, including if the basin is under a declaration of drought. Consistent with this requirement, **sections 3 and 4** of this bill require the State Engineer to reject an application for a permit to appropriate water if the water from the proposed source of supply has been reserved under **section 1. Section 2** of this bill makes 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. For each basin in which there is water available for appropriation as of July 1, 2019, the State Engineer shall reserve



* S B 1 4 0 *

1 *10 percent of the total remaining water available for appropriation*
2 *in the basin. Except as otherwise provided in subsection 2, such*
3 *reserved water in the basin pursuant to this section is not available*
4 *for appropriation.*

5 *2. The State Engineer may allow the temporary use of water*
6 *from the reserve created pursuant to subsection 1 in an*
7 *emergency, including, without limitation, if the basin is located*
8 *within a county under a declaration of drought by the Governor,*
9 *the United States Secretary of Agriculture or the President of the*
10 *United States. Any such use is subject to all other relevant rules,*
11 *regulations and statutes.*

12 **Sec. 2.** NRS 533.030 is hereby amended to read as follows:

13 533.030 1. Subject to existing rights, and except as otherwise
14 provided in this section and NRS 533.027, *and section 1 of this act,*
15 all water may be appropriated for beneficial use as provided in this
16 chapter and not otherwise.

17 2. The use of water, from any stream system as provided in this
18 chapter and from underground water as provided in NRS 534.080,
19 for any recreational purpose, or the use of water from the Muddy
20 River or the Virgin River to create any developed shortage supply or
21 intentionally created surplus, is hereby declared to be a beneficial
22 use. As used in this subsection:

23 (a) "Developed shortage supply" has the meaning ascribed to it
24 in Volume 73 of the Federal Register at page 19884, April 11, 2008,
25 and any subsequent amendment thereto.

26 (b) "Intentionally created surplus" has the meaning ascribed to it
27 in Volume 73 of the Federal Register at page 19884, April 11, 2008,
28 and any subsequent amendment thereto.

29 3. Except as otherwise provided in subsection 4, in any county
30 whose population is 700,000 or more:

31 (a) The board of county commissioners may prohibit or restrict
32 by ordinance the use of water and effluent for recreational purposes
33 in any artificially created lake or stream located within the
34 unincorporated areas of the county.

35 (b) The governing body of a city may prohibit or restrict by
36 ordinance the use of water and effluent for recreational purposes in
37 any artificially created lake or stream located within the boundaries
38 of the city.

39 4. In any county whose population is 700,000 or more, the
40 provisions of subsection 1 and of any ordinance adopted pursuant to
41 subsection 3 do not apply to:

42 (a) Water stored in an artificially created reservoir for use in
43 flood control, in meeting peak water demands or for purposes
44 relating to the treatment of sewage;

45 (b) Water used in a mining reclamation project; or



(c) A body of water located in a recreational facility that is open to the public and owned or operated by the United States or the State of Nevada.

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, *and section 1 of this act*, 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, *where the unappropriated water has been reserved pursuant to section 1 of this act* 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

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

4. Except as otherwise provided in this subsection and subsections 6 and 10 and NRS 533.365, the State Engineer shall approve or reject each application within 2 years after the final date for filing a protest. The State Engineer may postpone action:

(a) Upon written authorization to do so by the applicant.

(b) If an application is protested.

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

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

(e) Where court actions or adjudications are pending, which may affect the outcome of the application.

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

(g) On an application for a permit to change a vested water right in a basin 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 from a governmental agency.

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

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

6. Except as otherwise provided in this subsection and subsection 10, 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 postpone action on the application pursuant to subsection 4.

7. If the State Engineer has not approved, rejected or held a hearing on an 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 immediately preceding the



1 time at which the State Engineer is ready to approve or reject the
2 application. The cost of the republication must be paid by the
3 applicant. After such republication, a protest may be filed in
4 accordance with NRS 533.365.

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

21 9. If a person is the successor in interest of an owner of a water
22 right or an owner of real property upon which a domestic well is
23 located and if the former owner of the water right or real property on
24 which a domestic well is located had previously filed a written
25 protest against the granting of an application, the successor in
26 interest must be allowed to pursue that protest in the same manner
27 as if the successor in interest were the former owner whose interest
28 he or she succeeded. If the successor in interest wishes to pursue the
29 protest, the successor in interest must notify the State Engineer in a
30 timely manner on a form provided by the State Engineer.

31 10. The provisions of subsections 1 to 9, inclusive, do not
32 apply to an application for an environmental permit or a temporary
33 permit issued pursuant to NRS 533.436 or 533.504.

34 11. The provisions of subsection 8 do not authorize the
35 recipient of an approved application to use any state land
36 administered by the Division of State Lands of the State Department
37 of Conservation and Natural Resources without the appropriate
38 authorization for that use from the State Land Registrar.

39 12. As used in this section, "domestic well" has the meaning
40 ascribed to it in NRS 534.350.

41 **Sec. 4.** NRS 533.371 is hereby amended to read as follows:

42 533.371 The State Engineer shall reject the application and
43 refuse to issue a permit to appropriate water for a specified period if
44 the State Engineer determines that:

45 1. The application is incomplete;



- 1 2. The prescribed fees have not been paid;
2 3. The proposed use is not temporary;
3 4. There is no water available from the proposed source of
4 supply without exceeding the perennial yield or safe yield of that
5 source;
6 5. *The water from the proposed source of supply has been*
7 *reserved pursuant to section 1 of this act;*
8 6. The proposed use conflicts with existing rights; or
9 ~~6.~~ 7. The proposed use threatens to prove detrimental to the
10 public interest.
11 **Sec. 5.** The amendatory provisions of this act apply to any
12 application for a permit to appropriate water that has been submitted
13 to the State Engineer but not approved before July 1, 2019.
14 **Sec. 6.** This act becomes effective on July 1, 2019.

