

ASSEMBLY BILL NO. 34—COMMITTEE ON NATURAL RESOURCES

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

PREFILED NOVEMBER 16, 2022

Referred to Committee on Natural Resources

SUMMARY—Revises provisions relating to water. (BDR 48-235)

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 the public notice requirements for certain applications relating to water; revising certain requirements for maps relating to water rights; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, the State Engineer is required to publish a notice for certain applications in a newspaper of general circulation consecutively for certain periods of time. (NRS 533.360) **Section 6** of this bill eliminates the requirement to publish the notice consecutively. **Section 6** further requires the State Engineer to post the notice on the Internet website of the Division of Water Resources of the State Department of Conservation and Natural Resources.

Sections 3, 10 and 11 of this bill remove requirements that certain maps relating to water rights be on mylar and tracing linen.

Section 4 of this bill clarifies that certain blank forms for a proof of appropriation must be included in the notice sent by the State Engineer to certain persons claiming rights in or to the waters of certain stream systems.

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

Section 1. (Deleted by amendment.)

Sec. 2. (Deleted by amendment.)



Sec. 3. NRS 533.100 is hereby amended to read as follows:

533.100 1. The State Engineer shall begin an investigation of the flow of the stream and of the ditches diverting water, and of the lands irrigated therefrom, and shall gather such other data and information as may be essential to the proper determination of the water rights in the stream.

2. The State Engineer shall:

(a) Reduce his or her observations and measurements to writing.

(b) If necessary, execute surveys or cause them to be executed.

(c) If necessary, prepare, or cause to be prepared, maps from the observations of such surveys in accordance with such uniform rules and regulations as the State Engineer may adopt.

3. The surveys and maps shall show with substantial accuracy:

(a) The course of the stream.

(b) The location of each ditch or canal diverting water therefrom, together with the point of diversion thereof.

(c) The area and outline of each parcel of land upon which the water of the stream has been employed for the irrigation of crops or pasture.

(d) The kind of culture upon each of the parcels of land.

4. The map shall be prepared as the surveys and observations progress, and, when completed, shall be filed and made of record in the Office of the State Engineer. Such map for original filing in the Office of the State Engineer shall, in addition to complying with any other applicable rule or regulation of the State Engineer, be on ~~mylar, on~~ a scale of not less than 1,000 feet to the inch.

Sec. 4. NRS 533.115 is hereby amended to read as follows:

533.115 1. The State Engineer shall, in addition, enclose with the notice to be mailed as provided in **subsection 4 of** NRS 533.095, blank forms upon which a claimant who has not submitted proof pursuant to NRS 533.087 shall present in writing all particulars necessary for the determination of the claimant's right in or to the waters of the stream system. The form for a proof of appropriation must include the following:

(a) The name and mailing address of the claimant.

(b) The nature of the right or use on which the claim for appropriation is based.

(c) The time of the initiation of such right, the priority date claimed and a description of the place of diversion and works of diversion and distribution.

(d) The date of beginning of construction.

(e) The date when completed.

(f) The dates of beginning and completion of enlargements.

(g) The dimensions of the ditch as originally constructed and as enlarged.



(h) The date when water was first used for irrigation or other beneficial purposes.

(i) If the water was used for irrigation, the number of acres irrigated the first year, the number of acres irrigated in subsequent years, the dates of irrigation, the area and location of the lands which were irrigated, the character of the soil and the kind of crops cultivated, the rate of diversion and the number of acre-feet of water per annum required to irrigate the land.

(j) If the water was used for a beneficial purpose other than irrigation, the rate of diversion and the number of acre-feet of water used annually.

(k) If the water was used for watering livestock, the number and type of livestock.

(l) Any other facts as will show the extent and nature of the right and compliance with the law in acquiring the same, as may be required by the State Engineer.

2. A claimant must submit a separate proof of appropriation for each source of water of the stream system in which or to which the claimant claims a right.

3. The proof of appropriation submitted by the claimant must be accompanied by a map prepared, except as otherwise provided in subsection 4, in accordance with and depicting any information required pursuant to the requirements of subsections 3 and 4 of NRS 533.100.

4. If the map submitted with a proof of appropriation is prepared for water used for watering livestock, the map must be on a scale of not less than 1:24,000 or a map prepared by the United States Geological Survey covering a quadrangle of 7 1/2 minutes of latitude and longitude, and further identifying the location or extent of the livestock use by one-sixteenth sections within a numbered section, township and range.

Sec. 5. (Deleted by amendment.)

Sec. 6. 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 2 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 in the county where the point of diversion is located, *and post on the Internet website of the Division of Water Resources of the State Department of Conservation and Natural Resources*, 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 a temporary permit issued pursuant to NRS 533.436 or 533.504.

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 533.370 is hereby amended to read as follows:

533.370 1. Except as otherwise provided in this section and NRS 533.0241, 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, where the groundwater that has not been committed for use has been reserved pursuant to NRS 533.0241 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.



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(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 *and reposted* pursuant to NRS 533.360 immediately preceding the time at which the State Engineer is ready to approve or reject the application. The cost of the republication must be paid by the applicant. After such republication, *and reposting*, a protest may be filed in accordance with NRS 533.365.

8. 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 11, 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



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

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.

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

11. The provisions of subsection 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.

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

Sec. 10. NRS 533.405 is hereby amended to read as follows:

533.405 1. The State Engineer may, in his or her discretion, request that the statement required by NRS 533.400 be accompanied by a map on ~~tracing linen on~~ a scale of not less than 1,000 feet to the inch, which shall show with substantial accuracy the following:

(a) The point of diversion by legal subdivisions or by metes and bounds from some corner, when possible, from the source of supply.

(b) The traverse of the ditch or other conduit, together with cross sections of the same.

(c) The legal subdivisions of the land embraced in the application for the permit and the outline by metes and bounds of the irrigated area, with the amount thereof.

(d) The average grade and the difference in elevation of the termini of the conduit, and the carrying capacity of the same.

(e) The actual quantity of water flowing in the canal or conduit during the time the survey was being made.

2. The map must bear the affidavit of the surveyor or engineer making such survey and map. If the survey and map are made by different persons the affidavit of each must be on the map, showing that the map as compiled agrees with the survey.



3. The map shall conform with such rules and regulations as the State Engineer shall make, which rules shall not be in conflict herewith.

Sec. 11. NRS 533.435 is hereby amended to read as follows:

533.435 1. The State Engineer shall collect the following fees:

For examining and filing an application for a permit to appropriate water \$360.00

This fee includes the cost of publication, which is \$50.

For reviewing a corrected application or map, or both, in connection with an application for a water right permit..... 100.00

For examining and acting upon plans and specifications for construction of a dam..... 1,200.00

For examining and filing an application for each permit to change the point of diversion, manner of use or place of use of an existing right..... 240.00

This fee includes the cost of publication, which is \$50.

For examining and filing an application for a temporary permit to change the point of diversion, manner of use or place of use of an existing right..... 180.00

For issuing and recording each permit to appropriate water for any purpose, except for generating hydroelectric power which results in nonconsumptive use of the water, watering livestock or wildlife purposes 360.00
plus \$3 per acre-foot approved or fraction thereof.

Except for generating hydroelectric power, watering livestock or wildlife purposes, for issuing and recording each permit to change an existing water right whether temporary or permanent for any purpose..... 300.00
plus \$3 per acre-foot approved or fraction thereof.

For issuing and recording each permit for additional rate of diversion from a well where no additional volume of water is granted..... 1,000.00



For issuing and recording each permit to change the point of diversion or place of use of an existing right whether temporary or permanent for irrigation purposes, a maximum fee of	\$750.00
For issuing and recording each permit to appropriate or change the point of diversion or place of use of an existing right whether temporary or permanent for watering livestock or wildlife purposes	240.00
plus \$50 for each cubic foot of water per second approved or fraction thereof.	
For issuing and recording each permit to appropriate or change an existing right whether temporary or permanent for water for generating hydroelectric power which results in nonconsumptive use of the water.....	480.00
plus \$50 for each cubic foot per second of water approved or fraction thereof.	
For filing and examining a request for a waiver in connection with an application to drill a well.....	120.00
For filing and examining a notice of intent to drill a well	25.00
For filing and examining an affidavit to relinquish water rights in favor of use of water for domestic wells	300.00
For filing a secondary application under a reservoir permit	300.00
For approving and recording a secondary permit under a reservoir permit	540.00
For reviewing each tentative subdivision map	180.00
plus \$1 per lot.	
For reviewing and approving each final subdivision map	120.00
For storage approved under a dam permit for privately owned nonagricultural dams which store more than 50 acre-feet	480.00
plus \$1.25 per acre-foot storage capacity. This fee includes the cost of inspection and must be paid annually.	



1	For flood control detention basins.....	\$480.00
2	plus \$1.25 per acre-foot storage	
3	capacity. This fee includes the cost of	
4	inspection and must be paid	
5	annually.	
6	For filing proof of completion of work	60.00
7	For filing proof of beneficial use.....	60.00
8	For issuing and recording a certificate upon	
9	approval of the proof of beneficial use.....	350.00
10	For filing proof of resumption of a water right	360.00
11	For filing any protest.....	30.00
12	For filing any application for extension of time	
13	within which to file proofs, of completion	
14	or beneficial use, for each year for which	
15	the extension of time is sought.....	120.00
16	For filing any application for extension of time	
17	to prevent a forfeiture, for each year for	
18	which the extension of time is sought.....	120.00
19	For reviewing a cancellation of a water right	
20	pursuant to a petition for review	360.00
21	For examining and filing a report of	
22	conveyance filed pursuant to paragraph (a)	
23	of subsection 1 of NRS 533.384.....	120.00
24	plus \$20 per conveyance document.	
25	For filing any other instrument.....	10.00
26	For making a copy of any document recorded	
27	or filed in the Office of the State Engineer,	
28	for the first page	1.00
29	For each additional page.....	.20
30	For certifying to copies of documents, records	
31	or maps, for each certificate	6.00
32	For each copy of any full size drawing or map	6.00
33	For each color copy of any full size drawing or	
34	map (2' x 3')	12.00
35	For colored mylar plots.....	10.00

2. When fees are not specified in subsection 1 for work required of the Office of the State Engineer, the State Engineer shall collect the actual cost of the work.

3. Except as otherwise provided in this subsection, all fees collected by the State Engineer under the provisions of this section must be deposited in the State Treasury for credit to the State General Fund. All fees received for copies of any drawing or map must be kept by the State Engineer and used only to pay the costs of printing, replacement and maintenance of printing equipment. Any



- 1 publication fees received which are not used by the State Engineer
2 for publication expenses must be returned to the persons who paid
3 the fees. If, after exercising due diligence, the State Engineer is
4 unable to make the refunds, the State Engineer shall deposit the fees
5 in the State Treasury for credit to the State General Fund.
- 6 **Sec. 12.** (Deleted by amendment.)
- 7 **Sec. 13.** (Deleted by amendment.)

