SUMMARY—Revises provisions relating to permits to appropriate water. (BDR 48-182)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

Effect on the State Highway Fund: No.

AN ACT relating to water; revising provisions relating to the cancellation of a permit to appropriate water; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, any person who wishes to appropriate public waters, or to change the place of diversion, manner of use or place of use of water already appropriated, must apply to the State Engineer for a permit to do so. (NRS 533.325) If the State Engineer judges that the holder of any permit to appropriate public water is not proceeding in good faith and with reasonable diligence to perfect the appropriation, existing law requires the State Engineer to cancel the permit and authorizes the holder of a cancelled permit to file a written petition with the State Engineer to review the permit cancellation by way of a public hearing. (NRS 533.395)

Section 1 of this bill provides that the State Engineer may rescind the cancellation of a permit without holding a public hearing and, in such a case, the effective date of the permit is not vacated.

Existing law: (1) authorizes, after receiving and considering evidence, the State Engineer to affirm, modify or rescind the cancellation; and (2) provides that if the State Engineer modifies or

rescinds the cancellation of the permit, the effective date of the appropriation under the permit is vacated and replaced by the date of the filing of the written petition with the State Engineer. (NRS 533.395) **Section 1** instead requires the State Engineer, when determining whether to vacate and replace the effective date of the appropriation under the permit, to consider: (1) the procedural history of the permit; (2) whether construction of the works of diversion commenced before cancellation or rescission of the permit; and (3) whether any or all of the appropriation under the permit was placed to beneficial use before the notice of cancellation.

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

Section 1. NRS 533.395 is hereby amended to read as follows:

533.395 1. If, at any time in the judgment of the State Engineer, the holder of any permit to appropriate the public water is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall require the submission of such proof and evidence as may be necessary to show a compliance with the law. If, in the judgment of the State Engineer, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall cancel the permit, and advise the holder of its cancellation. 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 appropriation.

2. If any permit is cancelled under the provisions of this section or NRS 533.390 or 533.410, the holder of the permit may ~~[within]~~ ***, not later than*** 60 days ~~[of]~~ ***after*** the ***date of the notice of*** cancellation of the permit ***,*** file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public hearing. ~~[The]~~ ***Except as otherwise provided in subsection 3, the*** State Engineer ***shall hold a public hearing and*** may, after receiving and considering evidence, affirm, modify or rescind the cancellation.

3. ~~[If]~~ ***The State Engineer may, without holding a public hearing, rescind the cancellation of a permit. If the State Engineer rescinds the cancellation pursuant to this subsection, the effective date of the appropriation under the permit is not vacated.***

4. Except as otherwise provided in subsection 3, if the decision of the State Engineer modifies or rescinds the cancellation of a permit, the effective date of the appropriation under the permit ~~[is]~~ ***may be*** vacated and replaced by the date of the filing of the written petition with the State Engineer. ***In determining whether to vacate and replace the effective date of the appropriation under the permit, the State Engineer shall consider, without limitation:***

(a) The procedural history of the permit, including, without limitation, previous cancellations, rescissions of cancellations and extensions;

(b) Whether construction of the works of diversion commenced before the cancellation or rescission of the permit; and

(c) Whether any or all of the appropriation under the permit was placed to beneficial use before the notice of cancellation.

~~[4.]~~ ***5.*** The cancellation of a permit may not be reviewed or be the subject of any judicial proceedings unless a written petition for review has been filed and the cancellation has been affirmed, modified or rescinded pursuant to ~~[subsection 2.]~~ ***this section.***

~~[5.]~~ ***6.*** For the purposes of this section, the measure of reasonable diligence is the steady application of effort to perfect the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised 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.

~~[6.]~~ ***7.*** The appropriation of water or the acquisition or lease of appropriated water from any:

(a) Stream system as provided for in this chapter; or

(b) Underground water as provided for in NRS 534.080,

➥ by a political subdivision of this State or a public utility, as defined in NRS 704.020, to serve the present or the reasonably anticipated future municipal, industrial or domestic needs of its customers for water, as determined in accordance with a master plan adopted pursuant to chapter 278 of NRS or a plan approved by the State Engineer, must be considered when reviewing an extension of time.