

Assembly Bill No. 416—Assemblymen Goicoechea, Carpenter,
Leslie; Gansert, Goedhart, Grady, Hardy and Smith

Joint Sponsor: Senator Rhoads

CHAPTER.....

AN ACT relating to water; requiring the State Engineer or a person designated by him to conduct an inventory of a basin before approving an application for an interbasin transfer of groundwater under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the State Engineer to consider certain factors when determining if an application for an interbasin transfer of groundwater must be rejected, including whether there is a justified need to import the water from another basin, if there is an advisable plan for the conservation of water in place, whether the proposed action is environmentally sound and 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. (NRS 533.370) In addition to those requirements, **section 4** of this bill requires that, before the State Engineer may approve an interbasin transfer of groundwater, he must conduct an inventory of the basin from which the water is to be exported if it is a basin which the State Engineer has not already inventoried. The inventory must include: (1) the total amount of surface water and groundwater appropriated in accordance with a decreed, certified or permitted right; (2) an estimate of the amount and location of all surface water and groundwater available for appropriation in the basin; and (3) the names of each owner of record of a decreed, certified or permitted right in the basin. The applicant for the interbasin transfer of groundwater must pay a fee to cover the cost of conducting the inventory. **Section 4** also requires the State Engineer to complete an inventory within 1 year after commencing the inventory. **Section 5** of this bill expands the definition of “person” for purposes of chapter 533 of NRS to include a political subdivision of this State.

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 the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 533.010 to 533.023, inclusive, and section 3 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Interbasin transfer of groundwater” means a transfer of groundwater for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.*



Sec. 4. 1. *In addition to the requirements of NRS 533.370, before approving an application for an interbasin transfer of more than 250 acre-feet of groundwater from a basin which the State Engineer has not previously inventoried or for which he has not conducted, or caused to be conducted, a study pursuant to NRS 532.165 or 533.368, the State Engineer or a person designated by the State Engineer shall conduct an inventory of the basin from which the water is to be exported. The inventory must include:*

(a) The total amount of surface water and groundwater appropriated in accordance with a decreed, certified or permitted right;

(b) An estimate of the amount and location of all surface water and groundwater that is available for appropriation in the basin; and

(c) The name of each owner of record set forth in the records of the Office of the State Engineer for each decreed, certified or permitted right in the basin.

2. *The provisions of this section do not:*

(a) Require the State Engineer to initiate or complete a determination of the surface water or groundwater rights pursuant to NRS 533.090 to 533.320, inclusive, or to otherwise quantify any vested claims of water rights in the basin before approving an application for an interbasin transfer of groundwater from the basin; or

(b) Prohibit the State Engineer from considering information received from or work completed by another person to include in the inventory, if the inventory is otherwise conducted in accordance with the provisions of subsection 1.

3. *The State Engineer shall charge the applicant a fee to cover the cost of the inventory. The amount of the fee must not exceed the cost to the State Engineer of conducting the inventory.*

4. *The State Engineer shall complete any inventory conducted pursuant to subsection 1 within 1 year after commencing the inventory.*

Sec. 5. NRS 533.010 is hereby amended to read as follows:

533.010 ~~[As used in this chapter, "person"]~~ "Person" includes the United States, ~~[and]~~ this State ~~[,]~~ *and any political subdivision of this State.*

Sec. 6. NRS 533.015 is hereby amended to read as follows:

533.015 ~~[As used in this chapter,]~~ "State Engineer" ~~[shall be deemed to mean]~~ *means* the State Engineer or any duly authorized assistant.



Sec. 7. NRS 533.020 is hereby amended to read as follows:

533.020 ~~[As used in this chapter, “stream]~~ **“Stream** system” ~~[shall be interpreted as including]~~ **includes** any stream, together with its tributaries and all streams or bodies of water to which the same may be tributary.

Sec. 8. NRS 533.023 is hereby amended to read as follows:

533.023 ~~[As used in this chapter, “wildlife]~~ **“Wildlife** purposes” includes the watering of wildlife and the establishment and maintenance of wetlands, fisheries and other wildlife habitats.

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 533.369 is hereby amended to read as follows:

533.369 1. All money collected pursuant to subsection 3 of NRS 533.368 **or subsection 3 of section 4 of this act** must be deposited with the State Treasurer for credit to a special Account for Studies Concerning Water.

2. The interest and income earned on the money in the Account for Studies Concerning Water, after deducting any applicable charges, must be credited to the Account.

3. The money received pursuant to subsection 3 of NRS 533.368 **or subsection 3 of section 4 of this act** must be used to defray the cost of conducting the studies required pursuant to subsection 1 of NRS 533.368 ~~[]~~ **and the inventories required pursuant to subsection 1 of section 4 of this act.** Any money paid by an applicant that exceeds the amount required to conduct a study must be refunded to the applicant.

4. Any balance remaining in the Account does not revert to the State General Fund at the end of the fiscal year.

Sec. 11. 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, 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:

(1) His intention in good faith to construct any work necessary to apply the water to the intended beneficial use with reasonable diligence; and



(2) His 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 this subsection and subsections 3 and 11 and NRS 533.365, the State Engineer shall approve or reject each application within 1 year after the final date for filing a protest. The State Engineer may:

(a) Postpone action upon written authorization to do so by the applicant or, if an application is protested, by the protestant and the applicant.

(b) Postpone action if the purpose for which the application was made is municipal use.

(c) In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368 or where court actions are pending, withhold action until it is determined there is unappropriated water or the court action becomes final.

3. Except as otherwise provided in subsection 11, 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:

(a) Postpone action upon written authorization to do so by the applicant or, if the application is protested, by the protestant and the applicant.

(b) In areas where studies of water supplies have been determined to be necessary by the State Engineer pursuant to NRS 533.368 or where court actions are pending, withhold action until it is determined there is unappropriated water or the court action becomes final.

4. If the State Engineer does not act upon an application within 1 year after the final date for filing a protest, the application remains active until acted upon by the State Engineer.

5. Except as otherwise provided in subsection 11, where there is no unappropriated water in the proposed source of supply, or where its proposed use or change conflicts with existing rights or with protectible 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.

6. 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.

7. 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 12, 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.

8. If:

(a) The State Engineer receives an application to appropriate any of the public waters, or to change the point of diversion, manner of use or place of use of water already appropriated;

(b) The application involves an amount of water exceeding 250 acre-feet per annum;

(c) The application involves an interbasin transfer of groundwater; and



(d) Within 7 years after the date of last publication of the notice of application, the State Engineer has not granted the application, denied the application, held an administrative hearing on the application or issued a permit in response to the application, the State Engineer shall notice a new period of 45 days in which a person who is a successor in interest to a protestant or an affected water right owner may file with the State Engineer a written protest against the granting of the application. Such notification must be entered on the Internet website of the State Engineer and must, concurrently with that notification, be mailed to the board of county commissioners of the county of origin.

9. Except as otherwise provided in subsection 10, a person who is a successor in interest to a protestant or an affected water right owner who wishes to protest an application in accordance with a new period of protest noticed pursuant to subsection 8 shall, within 45 days after the date on which the notification was entered and mailed, file with the State Engineer a written protest that complies with the provisions of this chapter and with the regulations adopted by the State Engineer, including, without limitation, any regulations prescribing the use of particular forms or requiring the payment of certain fees.

10. 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 he were the former owner whose interest he succeeded. If the successor in interest wishes to pursue the protest, the successor in interest must notify the State Engineer on a form provided by the State Engineer.

11. The provisions of subsections 1 to 6, inclusive, do not apply to an application for an environmental permit.

12. The provisions of subsection 7 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.

13. As used in this section:

(a) "County of origin" means the county from which groundwater is transferred or proposed to be transferred.

(b) "Domestic well" has the meaning ascribed to it in NRS 534.350.



~~[(c) "Interbasin transfer of groundwater" means a transfer of groundwater for which the proposed point of diversion is in a different basin than the proposed place of beneficial use.]~~

Sec. 12. The amendatory provisions of this act do not apply to an application for an interbasin transfer of groundwater for which a notice of hearing is issued before July 1, 2009.

Sec. 13. This act becomes effective on July 1, 2009.

