

Committee Action:

Do Pass _____

Amend & Do Pass _____

Other _____

Assembly Committee on Natural Resources, Agriculture, and Mining

This measure may be considered for action during today's work session.

April 10, 2019

ASSEMBLY BILL 30

Revises provisions governing the appropriation of water. (BDR 48-214)

Sponsored by: Assembly Committee on Natural Resources, Agriculture, and Mining (On Behalf of the Division of Water Resources of the State Department of Conservation and Natural Resources)

Date Heard: February 27, 2019

Fiscal Impact: Effect on Local Government: No.
Effect on the State: No.

Assembly Bill 30 provides that before rejecting an application for a permit to appropriate water to beneficial use because the proposed use or change conflicts with existing rights or protectable interests, the State Engineer may consider certain proposals to avoid or eliminate the conflict. The State Engineer is authorized to approve the application for such a permit on the conditions that before the water is appropriated for beneficial use: (1) every measure or action included in the proposal that the State Engineer determines is necessary to avoid or eliminate the conflict is taken; and (2) the conflict is avoided or eliminated.

Amendments: Proposed by the Assembly Committee on Natural Resources, Agriculture, and Mining:

- Provides that if water is available within the duty set forth in the application for appropriation and the application may conflict with existing water rights or protectable interest in domestic wells, the State Engineer may consider an applicant's proposed monitoring, management and mitigation plan. Prior to this consideration, the applicant has to take every reasonable effort to avoid the conflict and must provide to the State Engineer documentation that the following efforts have been made:
 - Configure points of diversion and diversion rates of proposed wells to avoid any conflicts;
 - Reduce the size of the project or improve water efficiency, which sufficiently reduces the duty of water necessary to avoid any conflicts; and
 - Work cooperatively with existing water right holders and domestic well owners to resolve conflicts or potential conflicts by mutual agreement.
- Provides that the State Engineer may require a monitoring, management and mitigation plan if the State Engineer does not find that the application conflicts with existing water rights or protectable interests;
- Provides that the State Engineer shall give notice and conduct a public hearing on the monitoring, management and mitigation plan before approving or denying such plan;

- Provides that the notice has to be republished at the expense of the applicant if the plan is amended;
- Provides that the State Engineer may approve the application if the State Engineer determines that the conflict will be avoided; and
- Provides that the State Engineer shall deny the application if the State Engineer determines that the conflict will not be avoided.

Proposed Amendment for Assembly Bill 30

(Proposed by Assembly Committee on Natural Resources, Agriculture and Mining)

April 10, 2019

Proposed Changes

Section 1. Chapter 533 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If ~~[there is]~~ water is available, within the duty of water set forth in the application, for appropriation in the proposed source of supply, before rejecting an application because the proposed use or change set forth in an application ~~conflicts~~ may conflict with existing rights or protectable interests in domestic wells as set forth in NRS 533.024, the State Engineer may ~~[instead]~~ consider an ~~[proposal to avoid or eliminate the conflict, which may include, without limitation:]~~ applicant's proposed monitoring, management and mitigation plan to avoid a conflict only after the water right applicant has taken every reasonable effort to avoid the conflict, as determined by the State Engineer, and provided such information to the State Engineer documenting those efforts to:

- (a) ~~[An agreement between the applicant and each holder of existing rights and owner of a domestic well with whom the application conflicts;]~~ Configure points of diversion and diversion rates of proposed wells to avoid any conflicts;*
- (b) ~~[A monitoring, management and mitigation plan; or]~~ Reduce the size of the project or improve water efficiency which sufficiently reduces the duty of water necessary to avoid any conflicts; and*
- (c) ~~[Any other plan to avoid or eliminate the conflict or replenish the source of supply impacted or depleted by the conflict.]~~ Work cooperatively with existing water right holders and domestic well owners to resolve conflicts or potential conflicts by mutual agreement.*

2. The State Engineer may require a person who submits an application or a change to an application to appropriate water for beneficial use to submit a monitoring, management and mitigation plan if the State Engineer does not find that the proposed use or change set forth in the application conflicts with existing rights or with protectable interests in existing domestic wells as set forth in NRS 533.024.

3. If the State Engineer considers a monitoring, management and mitigation plan pursuant to subsection 1 or requires such a plan pursuant to subsection 2, the State Engineer shall, before approving or denying the plan:

(a) Give notice of the plan as provided in NRS 533.360; and

(b) Hold a public hearing on the plan before approving or denying the plan.

4. If an application submitted that is dependent on a monitoring, management and mitigation plan is amended, the State Engineer shall republish the application in the manner set forth in NRS 533.360 and the State Engineer may require an applicant to pay the costs for giving notice of the plan pursuant to paragraph (a) of subsection 3 or republication of an amended application.

5. If , after the procedures set forth in subsection 1 have been carried out or a hearing is held pursuant to subsection 3, the State Engineer determines that ~~[a proposal submitted pursuant to subsection 1]~~ the conflict will ~~[avoid or eliminate the conflict,]~~ be avoided, the State Engineer may approve the application on the condition that before the applicant appropriates the water for beneficial use:

(a) Every measure or action ~~[included in the proposal that the State Engineer determines is necessary]~~ set forth in subsection 1 or in a plan pursuant to subsection 1 or 2 to avoid ~~[or eliminate]~~ the conflict is taken; and

(b) The conflict is avoided ~~[or eliminate]~~.

6. If, after the procedures set forth in subsection 1 have been carried out or a hearing is held pursuant to subsection 3, the State Engineer determines that the conflict will not be avoided, the State Engineer shall deny the application.