

Assembly Bill 30 Conceptual Amendment
Submitted by the Division of Water Resources
Nevada Department of Conservation and Natural Resources

Senate Natural Resources
May 16, 2019

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment.

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

1. If there is water available in the amount of water set forth in the application and where the applicant can satisfy all the criteria for approval of an application as set forth in NRS 533.370, ~~Except otherwise provided in subsections 2 and 3,~~ *the State Engineer may consider for approval or require any person who submits an application to submit a monitoring, management and mitigation plan as a condition of appropriating water for beneficial use. The State Engineer shall deny an application where there is no water available to appropriate.*

2. When reviewing an application where the proposed use or changes set forth in the application may result in conflicts with existing rights, the State Engineer may consider an applicant's efforts to avoid conflict pursuant to subsection 3 or may consider an applicant's proposed monitoring, management and mitigation plan to avoid the potential conflicts pursuant to subsection 4.

~~**3.** Before approving or~~ *If there is water available for appropriation in the proposed source of supply in the amount of water set forth in an application, before rejecting an application because the proposed use or change set forth in the application may conflict with existing rights or protectable interests in domestic wells as set forth in NRS 533.024, the State Engineer may first require the applicant to provide documentation of the applicant's good faith and make a reasonable efforts to resolve protests and avoid the potential conflict by considering,* including, without limitation:

(a) *Configuring the point or points of diversion and diversion rates to avoid any potential conflict* with existing rights if practicable;

(b) Reductions to ~~Reduce~~ *the size of the project, or improve water efficiency, or other alteration of the project for the purpose of avoiding* ~~to avoid any potential conflict~~ with existing rights; and

(c) *Work cooperatively with holders of existing rights and owners of domestic wells to enter into a mutual agreement that* resolves ~~avoids~~ *any potential conflict.*

↳ If the State Engineer finds that the ~~The applicant~~ has demonstrated that the good faith and reasonable efforts made pursuant to ~~must submit to the State Engineer documentation of the efforts to meet the requirements of this subsection~~ avoid potential conflicts with existing rights, resolve protests to the application, and satisfy the requirements set forth within NRS 533.370, the State Engineer may grant the application.

43. If a potential conflict is not avoided or otherwise resolved pursuant to subsection 3, ~~the State Engineer may consider a~~ monitoring, management and mitigation plan submitted by ~~finds that the applicant to avoid any remaining conflicts. has demonstrated that the reasonable efforts made pursuant to subsection 2:~~

(a) If an applicant submits a monitoring, management and mitigation plan, the application and the monitoring, management and mitigation plan is subject to an evidentiary hearing as set forth in subsection 5. ~~Avoid any potential conflict, the State Engineer may, subject to the provisions of NRS 533.370, approve the application.~~

(b) ~~Did not avoid any potential conflict, the~~ The State Engineer may require ~~the applicant to submit a~~ additional monitoring, management and mitigation plan measures submitted by the participating county pursuant to NRS 533.353.

54. Before approving an application that includes a monitoring, management and mitigation plan, the ~~The State Engineer shall:~~

(a) ~~Hold a public hearing on every proposed monitoring, management and mitigation plan, and~~ Cause notice of the application with the proposed monitoring management and mitigation plan to be noticed in accordance with the provisions set forth in NRS 533.360:

(b) ~~Before holding the public hearing required pursuant to paragraph (a), cause notice of the monitoring, management and mitigation plan to be:~~

(1) Published once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the point of diversion is located. The notice must include, without limitation, the date of the evidentiary ~~public~~ hearing required pursuant to paragraph (a). Proof of publication must be filed within 30 days after the final day of publication.

(2) If the application is for a proposed well described in subsection 3 of NRS 533.360, mailed 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 hold the evidentiary ~~public~~ hearing on the plan pursuant to paragraph (a).

(b) Hold an evidentiary hearing on the application and proposed monitoring, management and mitigation plan.

~~65. If the State Engineer determines after the evidentiary ~~public~~ hearing required pursuant to subsection 5 that the applicant has demonstrated that the application and proposed monitoring, management and mitigation plan, if implemented, satisfy the criteria to grant the application under NRS 533.370, the State Engineer may adopt the monitoring, management and mitigation plan on the condition that before the applicant diverts any water, the measures and actions set forth in the monitoring management and mitigation plan are implemented for the fulfilment as necessary to avoid a conflict with existing rights. ~~any potential conflict will be avoided pursuant to the monitoring, management and mitigation plan, the State Engineer may, subject to the provisions of NRS 533.370, approve the application on the condition that before the applicant appropriates water for beneficial use or changes the place of diversion, manner of use or place of use of water already appropriated.~~~~

~~(a) Every measure or action in the monitoring, management and mitigation plan is taken; and~~

~~(b) The potential conflicts are avoided.~~

➔ Nothing in this section shall prevent the State Engineer from requiring additional conditions or measures on a monitoring, management and mitigation plan based upon the evidence submitted during the evidentiary hearing pursuant to subsection 5.

~~76. If the State Engineer determines after the evidentiary ~~public~~ hearing required pursuant to subsection 5~~4~~ that the applicant has not demonstrated that the performance of ~~potential conflicts will be avoided pursuant to the monitoring, management and mitigation plan~~ eliminates the conflict with existing rights, the State Engineer shall reject the application pursuant to NRS 533.370.~~

Sec. 2. [Deleted by amendment]

Sec. 3. [Deleted by amendment]

Sec. 4. [Deleted by amendment]

Sec. 5. NRS 533.475 is hereby amended to read as follows:

533.475 The State Engineer and the assistants of the State Engineer shall have power to arrest any person violating any of the provisions of NRS 533.005 to 533.470, inclusive, *and section 1 of this act* and to turn that person over to the sheriff or other competent police officer within the county. Immediately on delivering any such person so arrested into the custody of the sheriff, the State Engineer or assistant making such arrest shall immediately, in writing, and upon oath, make a complaint before the justice of the peace against the person so arrested.

Sec. 6. NRS 533.480 is hereby amended to read as follows:

533.480 Any person violating any of the provisions of NRS 533.005 to 533.475, inclusive, *and section 1 of this act* shall be guilty of a misdemeanor.

Sec. 7. NRS 533.515 is hereby amended to read as follows:

533.515 1. No permit for the appropriation of water or application to change the point of diversion, manner of use or place of use under an existing water right may be denied because of the fact that the point of diversion described in the application for the permit, or any portion of the works in the application described and to be constructed for the purpose of storing, conserving, diverting or distributing the water are situated in any other state; but in all such cases where the place of intended use, or the lands, or part of the lands identified as the place of use, are situated within this state, the permit must be issued as in other cases, pursuant to the provisions of NRS 533.324 to 533.450, inclusive, *and section 1 of this act*, and chapter 534 of NRS.

2. The permit must not purport to authorize the doing or refraining from any act or thing, in connection with the system of appropriation, not properly within the scope of the jurisdiction of this state and the State Engineer to grant.

Sec. 8. NRS 533.520 is hereby amended to read as follows:

533.520 1. Any person who files an application for a permit to appropriate water from above or beneath the surface of the ground for use outside this State, or to change the point of diversion under an existing water right which has a place of use outside of this State, or to change the place of use of water from a location in this State to a location outside this State under an existing right, must file an application with the State Engineer for a permit to do so pursuant to provisions of NRS 533.324 to 533.450, inclusive, *and section 1 of this act*, and chapter 534 of NRS.

2. The State Engineer may approve such an application if the

State Engineer determines that the applicant's use of the water outside this State complies with the requirements of NRS 533.324 to 533.450, inclusive, *and section 1 of this act* and those provisions of chapter 534 of NRS pertaining to the appropriation of water. In making the determination, the State Engineer shall consider:

- (a) The supply of water available in this State;
- (b) The current and reasonably anticipated demands for water in this State;
- (c) The current or reasonably anticipated shortages of water in this State;
- (d) Whether the water that is the subject of the application could feasibly be used to alleviate current or reasonably anticipated shortages of water in this State;
- (e) The supply and sources of water available to the applicant in the state in which the applicant intends to use the water;
- (f) The demands placed on the applicant's supply of water in the state in which he or she intends to use the water; and
- (g) Whether the request in the application is reasonable, taking into consideration the factors set forth in paragraphs (a) to (f), inclusive.

3. The State Engineer may, as a condition to the approval of such an application, require the applicant to file a certificate from the appropriate official in the state in which the water is to be used, indicating to the satisfaction of the State Engineer that the intended use of the water would be beneficial and that the appropriation is feasible.

4. A person who is granted a permit pursuant to this section shall comply with the laws and regulations of this State governing the appropriation and use of water, as amended from time to time, and any change in the point of diversion, manner of use or place of use of water under a permit issued pursuant to this section is subject to the requirements of this section.

5. The State Engineer may, as a condition of the approval of any permit granted pursuant to this section, require that the use of water in another state be subject to the same regulations and restrictions that may be imposed upon the use of water in this State.

6. Upon submittal of an application under this section, the applicant and, if the applicant is a natural person, the personal representative of the person, are subject to the jurisdiction of the courts of this State and to service of process as provided in

Sec. 9. NRS 534.110 is hereby amended to read as follows:

534.110 1. The State Engineer shall administer this chapter and shall prescribe all necessary regulations within the terms of this chapter for its administration.

2. The State Engineer may:

(a) Require periodical statements of water elevations, water used, and acreage on which water was used from all holders of permits and claimants of vested rights.

(b) Upon his or her own initiation, conduct pumping tests to determine if overpumping is indicated, to determine the specific yield of the aquifers and to determine permeability characteristics.

3. The State Engineer shall determine whether there is unappropriated water in the area affected and may issue permits only if the determination is affirmative. The State Engineer may require each applicant to whom a permit is issued for a 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,

↳ to report periodically to the State Engineer concerning the effect of that well on other previously existing wells that are located within 2,500 feet of the well.

4. It is a condition of each appropriation of groundwater acquired under this chapter that the right of the appropriator relates to a specific quantity of water and that the right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion. In determining a reasonable lowering of the static water level in a particular area, the State Engineer shall consider the economics of pumping water for the general type of crops growing and may also consider the effect of using water on the economy of the area in general.

5. This section does not prevent the granting of permits to applicants later in time on the ground that the diversions under the proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator, so long as any protectable interests in existing domestic wells as set forth in NRS 533.024 and the rights of holders of existing appropriations can be satisfied under such express conditions ~~that~~ **or under a monitoring, management and mitigation plan that ~~to avoid~~ any potential conflict with existing rights is required by the State Engineer pursuant to section 1 of this act.** At the time a permit is granted for a 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 State Engineer shall include as a condition of the permit that pumping water pursuant to the permit may be limited or prohibited to prevent any unreasonable adverse effects on an existing domestic well located within 2,500 feet of the well, unless the holder of the permit and the owner of the domestic well have agreed to alternative measures that mitigate those adverse effects.

6. Except as otherwise provided in subsection 7, the State Engineer shall conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the groundwater supply may not be adequate for the needs of all permittees and all vested-right claimants, and if the findings of the State Engineer so indicate, the State Engineer may order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted to conform to priority rights.

7. The State Engineer:

(a) May designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin.

(b) Shall designate as a critical management area any basin in which withdrawals of groundwater consistently exceed the perennial yield of the basin upon receipt of a petition for such a designation which is signed by a majority of the holders of certificates or permits to appropriate water in the basin that are on file in the Office of the State Engineer.

➔ The designation of a basin as a critical management area pursuant to this subsection may be appealed pursuant to NRS 533.450. If a basin has been designated as a critical management area for at least 10 consecutive years, the State Engineer shall order that withdrawals, including, without limitation, withdrawals from domestic wells, be restricted in that basin to conform to priority rights, unless a groundwater management plan has been approved for the basin pursuant to NRS 534.037.

8. In any basin or portion thereof in the State designated by the State Engineer, the State Engineer may restrict drilling of wells in any portion thereof if the State Engineer determines that additional wells would cause an undue interference with existing wells. Any order or decision of the State Engineer so restricting drilling of such wells may be reviewed by the district court of the county pursuant to

11 NRS 533.450.

Sec. 10. The State Engineer shall adopt such reasonable rules and regulations as may be necessary for the proper and orderly execution and the speedy accomplishment of the purposes of this Chapter.

~~[Sec. 10.]~~ **Sec. 11.** This act becomes effective upon passage and approval.

Tim Wilson, Acting State Engineer
Division of Water Resources
775-684-2800