AN ACT relating to water; revising the circumstances under which the state engineer may reject an application for an interbasin transfer of ground water; requiring the state engineer to subordinate such an application to certain applications to appropriate ground water; and providing other matters properly relating thereto.

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

Section 1. NRS 533.360 is hereby amended to read as follows:

1 533.360 1. Except as otherwise provided in subsection 4, NRS 2 533.345 and subsection [3] 4 of NRS 533.370, [when] if an application is 3 filed in compliance with this chapter, the state engineer shall, within 30 4 days, publish or cause to be published once a week for 4 consecutive 5 weeks in a newspaper of general circulation and printed and published in 6 the county where the water is sought to be appropriated, a notice of the 7 application, which sets forth:
8 (a) That the application has been filed.
9 (b) The date of the filing.
10 (c) The name and address of the applicant.
11 (d) The name of the source from which the appropriation is to be made.
12 (e) The location of the place of diversion, described by legal 13 subdivision or metes and bounds and by a physical description of that 14 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 canceled 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) in a county whose population is less than 400,000;
   (b) for municipal, quasi-municipal or industrial use; and
   (c) 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. The notice must be mailed to the address of the owner as shown in the latest records of the county assessor. If there are not more than six of those wells, notices must be sent to each owner by certified mail, return receipt requested. If there are more than six of those 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 he may consider the application.

4. The provisions of this section do not apply to an environmental permit.

Sec. 2. 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 subsection [5] 6, the state engineer shall [either] approve or reject each application within 1 year after the final date for a filing protest. However:
   (a) Action [can] may be postponed by the state engineer upon written authorization to do so by the applicant or, [in case of a protested application, by both] if an application is protested, by the protestant and the applicant; and
   (b) In areas where studies of water supplies are being made or where court actions are pending, the state engineer may withhold action until it is determined there is unappropriated water or the court action becomes final.

3. Except as otherwise provided in this subsection [5, where there] and subsection 6, if action on an application for an interbasin transfer of ground water is postponed or withheld pursuant to subsection 2, and the application is not approved or rejected within 5 years after the final date for filing a protest to the application, the application must be subordinated to each application to appropriate ground water from the basin of origin that is filed after the application. The provisions of this subsection do not apply to an application for an interbasin transfer of ground water for which action is withheld pursuant to paragraph (b) of subsection 2 because of a pending court action.

4. Except as otherwise provided in subsection 6, if an application specified in subsection 1 is submitted to the state engineer and:
   (a) There is no unappropriated water in the proposed source of supply [or where its];
   (b) The proposed use or change set forth in the application conflicts with existing rights [or threatens to prove detrimental to the public interest [or]; or
   (c) The application is for an interbasin transfer of ground water and approval of the application would be inconsistent with the protection of the identified requirements for ground water for present and future development in the basin of origin, the state engineer shall reject the application and refuse to issue the requested permit. [Where] If a previous application for a similar use of water within the same basin has been rejected on [these] those grounds, the new application may be denied without publication. In determining whether an application must be rejected pursuant to paragraph (c), the state engineer shall consider the economy, environment and quality of life in the basin of origin.

5. [4] 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 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 [6.] 7, if the application is approved, the applicant may, on
receipt thereof, proceed with the construction of the necessary works and
take [all] any 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 [so] as long as the rejection
continues in force.

6. The provisions of subsections 1, 2 and 3 to 4, inclusive, do
not apply to an application for an environmental permit.

7. The provisions of subsection [4] 5 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 [such a] that use from
the state land registrar.

8. As used in this section, “basin of origin” means a basin from
which ground water is proposed to be transferred to another basin.

Sec. 3. NRS 538.171 is hereby amended to read as follows:

538.171 1. The commission shall receive, protect and safeguard and
hold in trust for the State of Nevada all water and water rights, and all
other rights, interests or benefits in and to the waters described in NRS
538.041 to 538.251, inclusive, and to the power generated thereon, held by
or which may accrue to the State of Nevada [under and by virtue of]
pursuant to any Act of the Congress of the United States or any
agreements, compacts or treaties to which the State of Nevada may become
a party, or otherwise.

2. Except as otherwise provided in this subsection, applications for the
original appropriation of [such] those waters, or to change the place of
diversion, manner of use or place of use of water covered by the original
appropriation, must be made to the commission in accordance with the
regulations of the commission. In considering [such an] the application,
the commission shall use the criteria set forth in [subsection 3] paragraphs
(a) and (b) of subsection 4 of NRS 533.370. The commission’s action on
the application constitutes the recommendation of the State of Nevada to
the United States for the purposes of any federal action on the matter
required by law. The provisions of this subsection do not apply to
supplemental water.

3. The commission shall furnish to the state engineer a copy of all
agreements entered into by the commission concerning the original
appropriation and use of [such waters. It] those waters. The commission
shall also furnish to the state engineer any other information it possesses
relating to the use of water from the Colorado River which the state
engineer deems necessary to allow him to act on applications for permits
for the subsequent appropriation of [these] those waters after they fall
within the [state engineer’s jurisdiction.]

4. Notwithstanding any provision of chapter 533 of NRS, any original
appropriation and use of the waters described in subsection 1 by the
commission or by any entity to whom or with whom the commission has
contracted the water is not subject to regulation by the state engineer.