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ASSEMBLY BILL NO. 466—COMMITTEE  
ON GOVERNMENT AFFAIRS

MARCH 28, 2011

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Referred to Committee on Government Affairs

**SUMMARY**—Requires the State Engineer to define, by regulation, the term “environmentally sound” for the purpose of making certain determinations relating to interbasin transfers of groundwater. (BDR 48-1120)

**FISCAL NOTE:** Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

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**AN ACT** relating to groundwater; requiring the State Engineer to define, by regulation, the term “environmentally sound” for the purpose of making certain determinations relating to interbasin transfers of groundwater; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1     When determining whether an application for an interbasin transfer of  
2     groundwater must be rejected, existing law requires the State Engineer to consider  
3     whether the proposed interbasin transfer is environmentally sound as it relates to  
4     the basin from which the water is exported. (NRS 533.370) This bill requires the  
5     State Engineer to define, by regulation, the term “environmentally sound” for the  
6     purpose of making that determination.

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

1     **Section 1.** NRS 533.370 is hereby amended to read as follows:  
2     533.370 1. Except as otherwise provided in this section and  
3     NRS 533.345, 533.371, 533.372 and 533.503, the State Engineer  
4     shall approve an application submitted in proper form which  
5     contemplates the application of water to beneficial use if:  
6     (a) The application is accompanied by the prescribed fees;



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1 (b) The proposed use or change, if within an irrigation district,  
2 does not adversely affect the cost of water for other holders of water  
3 rights in the district or lessen the efficiency of the district in its  
4 delivery or use of water; and

5 (c) The applicant provides proof satisfactory to the State  
6 Engineer of the applicant's:

7 (1) Intention in good faith to construct any work necessary to  
8 apply the water to the intended beneficial use with reasonable  
9 diligence; and

10 (2) Financial ability and reasonable expectation actually to  
11 construct the work and apply the water to the intended beneficial use  
12 with reasonable diligence.

13 2. Except as otherwise provided in this subsection and  
14 subsections 3 and 11 and NRS 533.365, the State Engineer shall  
15 approve or reject each application within 1 year after the final date  
16 for filing a protest. The State Engineer may:

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

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

22 (c) In areas where studies of water supplies have been  
23 determined to be necessary by the State Engineer pursuant to NRS  
24 533.368 or where court actions are pending, withhold action until it  
25 is determined there is unappropriated water or the court action  
26 becomes final.

27 3. Except as otherwise provided in subsection 11, the State  
28 Engineer shall approve or reject, within 6 months after the final date  
29 for filing a protest, an application filed to change the point of  
30 diversion of water already appropriated when the existing and  
31 proposed points of diversion are on the same property for which the  
32 water has already been appropriated under the existing water right  
33 or the proposed point of diversion is on real property that is proven  
34 to be owned by the applicant and is contiguous to the place of use of  
35 the existing water right. The State Engineer may:

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

39 (b) In areas where studies of water supplies have been  
40 determined to be necessary by the State Engineer pursuant to NRS  
41 533.368 or where court actions are pending, withhold action until it  
42 is determined there is unappropriated water or the court action  
43 becomes final.



1 4. If the State Engineer does not act upon an application within  
2 1 year after the final date for filing a protest, the application remains  
3 active until acted upon by the State Engineer.

4 5. Except as otherwise provided in subsection 11, where there  
5 is no unappropriated water in the proposed source of supply, or  
6 where its proposed use or change conflicts with existing rights or  
7 with protectable interests in existing domestic wells as set forth in  
8 NRS 533.024, or threatens to prove detrimental to the public  
9 interest, the State Engineer shall reject the application and refuse to  
10 issue the requested permit. If a previous application for a similar use  
11 of water within the same basin has been rejected on those grounds,  
12 the new application may be denied without publication.

13 6. In determining whether an application for an interbasin  
14 transfer of groundwater must be rejected pursuant to this section, the  
15 State Engineer shall consider:

16 (a) Whether the applicant has justified the need to import the  
17 water from another basin;

18 (b) If the State Engineer determines that a plan for conservation  
19 of water is advisable for the basin into which the water is to be  
20 imported, whether the applicant has demonstrated that such a plan  
21 has been adopted and is being effectively carried out;

22 (c) Whether the proposed action is environmentally sound as it  
23 relates to the basin from which the water is exported;

24 (d) Whether the proposed action is an appropriate long-term use  
25 which will not unduly limit the future growth and development in  
26 the basin from which the water is exported; and

27 (e) Any other factor the State Engineer determines to be  
28 relevant.

29 7. If a hearing is held regarding an application, the decision of  
30 the State Engineer must be in writing and include findings of fact,  
31 conclusions of law and a statement of the underlying facts  
32 supporting the findings of fact. The written decision may take the  
33 form of a transcription of an oral ruling. The rejection or approval of  
34 an application must be endorsed on a copy of the original  
35 application, and a record must be made of the endorsement in the  
36 records of the State Engineer. The copy of the application so  
37 endorsed must be returned to the applicant. Except as otherwise  
38 provided in subsection 12, if the application is approved, the  
39 applicant may, on receipt thereof, proceed with the construction of  
40 the necessary works and take all steps required to apply the water to  
41 beneficial use and to perfect the proposed appropriation. If the  
42 application is rejected, the applicant may take no steps toward  
43 the prosecution of the proposed work or the diversion and use of the  
44 public water while the rejection continues in force.

45 8. If:



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

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

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

8 (d) Within 7 years after the date of last publication of the notice  
9 of application, the State Engineer has not granted the application,  
10 denied the application, held an administrative hearing on the  
11 application or issued a permit in response to the application,

12 ➤ the State Engineer shall notice a new period of 45 days in which  
13 a person who is a successor in interest to a protestant or an affected  
14 water right owner may file with the State Engineer a written protest  
15 against the granting of the application. Such notification must be  
16 entered on the Internet website of the State Engineer and must,  
17 concurrently with that notification, be mailed to the board of county  
18 commissioners of the county of origin.

19 9. Except as otherwise provided in subsection 10, a person who  
20 is a successor in interest to a protestant or an affected water right  
21 owner who wishes to protest an application in accordance with a  
22 new period of protest noticed pursuant to subsection 8 shall, within  
23 45 days after the date on which the notification was entered and  
24 mailed, file with the State Engineer a written protest that complies  
25 with the provisions of this chapter and with the regulations adopted  
26 by the State Engineer, including, without limitation, any regulations  
27 prescribing the use of particular forms or requiring the payment of  
28 certain fees.

29 10. If a person is the successor in interest of an owner of a  
30 water right or an owner of real property upon which a domestic well  
31 is located and if the former owner of the water right or real property  
32 on which a domestic well is located had previously filed a written  
33 protest against the granting of an application, the successor in  
34 interest must be allowed to pursue that protest in the same manner  
35 as if the successor in interest were the former owner whose interest  
36 he or she succeeded. If the successor in interest wishes to pursue the  
37 protest, the successor in interest must notify the State Engineer on a  
38 form provided by the State Engineer.

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

41 12. The provisions of subsection 7 do not authorize the  
42 recipient of an approved application to use any state land  
43 administered by the Division of State Lands of the State Department  
44 of Conservation and Natural Resources without the appropriate  
45 authorization for that use from the State Land Registrar.



1       13. *The State Engineer shall, by regulation, define the term*  
2 *“environmentally sound” for the purpose of paragraph (c) of*  
3 *subsection 6.*

4       **14.** As used in this section:

5       (a) “County of origin” means the county from which  
6 groundwater is transferred or proposed to be transferred.

7       (b) “Domestic well” has the meaning ascribed to it in  
8 NRS 534.350.

9       **Sec. 2.** The State Engineer shall, on or before December 31,  
10 2011, adopt any regulations which are required by or necessary to  
11 carry out the provisions of this act.

12       **Sec. 3.** This act becomes effective:

13       1. Upon passage and approval for the purpose of adopting  
14 regulations; and

15       2. On January 1, 2012, for all other purposes.

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