

ASSEMBLY BILL NO. 298—COMMITTEE ON NATURAL
RESOURCES, AGRICULTURE, AND MINING

MARCH 15, 2017

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions relating to water. (BDR 48-735)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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.

AN ACT relating to water; defining “perennial yield”; defining “environmental soundness” and “environmentally sound”; authorizing, under certain circumstances, the State Engineer to consider the approval of a monitoring, management and mitigation plan; setting forth certain requirements for a monitoring, management and mitigation plan; requiring the State Engineer to provide notice of a proposed monitoring, management and mitigation plan; authorizing the State Engineer to approve an amendment to a monitoring, management and mitigation plan; defining “unappropriated water” for certain purposes; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, the State Engineer is required to reject an application for a
2 permit to appropriate water to beneficial use if there is no unappropriated water at
3 the source of supply or if the proposed use of the water or change conflicts with
4 existing rights or protectable interests in existing domestic wells or threatens to
5 prove detrimental to the public interest. (NRS 533.370) **Section 3** of this bill
6 provides that when reviewing an application, the State Engineer may consider
7 whether a monitoring, management and mitigation plan will eliminate the conflicts
8 with existing rights, protectable interests, the public interest or the environmental
9 soundness of an interbasin transfer of groundwater. **Section 3** also sets forth the
10 requirements for such a plan. **Section 4** of this bill requires the State Engineer to
11 provide notice to certain persons about the proposed plan. **Section 5** of this bill sets
12 forth certain requirements if, as part of a monitoring, management or mitigation
13 plan, a person is required to furnish mitigation water to a holder of existing rights



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14 or owner of an existing domestic well. **Section 6** of this bill authorizes the State
15 Engineer to consider an amendment to a monitoring, management or mitigation
16 plan. **Section 6** also authorizes the State Engineer, under certain circumstances, to
17 require certain changes to the monitoring provisions of a monitoring, management
18 and mitigation plan without complying with the requirements for a proposed
19 amendment. **Section 7.5** of this bill provides that it is the policy of this State to
20 address issues and conflicts related to certain applications for water and to
21 encourage the use of monitoring, management and mitigation plans under certain
22 circumstances. **Sections 8-19** of this bill make conforming changes.

23 Existing law: (1) requires the State Engineer to reject an application for a
24 permit to appropriate water if the State Engineer determines that there is no water
25 available from the proposed source of supply without exceeding the perennial yield
26 of that source; (2) authorizes the State Engineer to designate as a critical
27 management area any basin which withdrawals of groundwater consistently exceed
28 the perennial yield of the basin; and (3) requires the State Engineer to designate as a
29 critical management area any basin in which withdrawals of groundwater
30 consistently exceed the perennial yield of the basin upon receipt of certain petitions
31 (NRS 533.371, 534.110) **Sections 2 and 19** of this bill define the term “perennial
32 yield” for these purposes.

33 When considering whether to approve an application for an interbasin transfer
34 of groundwater, existing law requires the State Engineer to consider whether the
35 proposed interbasin transfer is environmentally sound. (NRS 533.370) **Section 2.5**
36 of this bill defines the term “environmentally sound” for this purpose.

37 Existing law requires the State Engineer to reject an application for a permit if
38 there is no unappropriated water in the proposed source of supply. (NRS 533.370)
39 **Section 10** defines “unappropriated water” for this purpose.

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

1 **Section 1.** Chapter 533 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 6, inclusive, of this
3 act.

4 **Sec. 2.** *“Perennial yield” means the maximum amount of*
5 *groundwater in a groundwater source of supply that may be*
6 *withdrawn each year over the long term without unreasonably or*
7 *continuously decreasing that groundwater source of supply.*

8 **Sec. 2.5.** *“Environmental soundness” or “environmentally*
9 *sound” means that the use of groundwater for an interbasin*
10 *transfer of water will not cause:*

11 1. *An unreasonable harmful impact on wildlife and*
12 *noninvasive plant communities which depend on groundwater in*
13 *the basin from which the water is transferred; or*

14 2. *The inability to support wildlife and noninvasive plant*
15 *communities resulting from changed groundwater conditions in*
16 *the basin from which the water is transferred.*

17 **Sec. 3.** 1. *In reviewing an application to appropriate water*
18 *or to change the point of diversion, manner of use or place of use*
19 *pursuant to NRS 533.370 or holding a hearing on such an*



1 application, the State Engineer may require an applicant to submit
2 a monitoring, management and mitigation plan to address any
3 conflict with existing rights, protectable interests in domestic wells
4 as set forth in NRS 533.024, the public interest or the
5 environmental soundness of an interbasin transfer of
6 groundwater. If the State Engineer determines during a hearing
7 on an application that a monitoring, management and mitigation
8 plan is required, he or she may postpone the hearing pending his
9 or her review of the monitoring, management and mitigation plan.

10 2. A monitoring, management and mitigation plan must be:

11 (a) Accompanied by substantial evidence that demonstrates the
12 feasibility and effectiveness of the plan in eliminating the conflict
13 or conflicts; and

14 (b) Reviewed and approved or denied by the State Engineer at
15 the same time the State Engineer is reviewing the application.

16 3. A monitoring, management and mitigation plan must
17 include, without limitation:

18 (a) A list of the locations of existing rights and domestic wells,
19 and any important environmental resources with which the
20 application may conflict;

21 (b) An explanation of how all conflicts with existing rights,
22 protectable interests in existing domestic wells, the public interest
23 and the environmental soundness of an interbasin transfer of
24 groundwater, as applicable, will be eliminated through the
25 measures set forth in the plan;

26 (c) A plan to monitor the impact on existing rights, existing
27 domestic wells and important environmental resources if the State
28 Engineer approves the application;

29 (d) Triggers and thresholds to avoid, manage and mitigate any
30 conflicts;

31 (e) Measures to mitigate any potential or actual conflict to
32 such a level that the conflict is eliminated; and

33 (f) Provisions to amend the plan if necessary to eliminate any
34 conflicts.

35 4. A monitoring, management and mitigation plan may
36 include, without limitation, one or more of the following actions to
37 eliminate any conflicts:

38 (a) Furnishing mitigation water of a sufficient quantity,
39 quality and reliability for the approved beneficial use of an
40 existing right or existing domestic well. If a monitoring,
41 management and mitigation plan requires the applicant to furnish
42 mitigation water, the applicant must demonstrate by substantial
43 evidence that the applicant has the ability to furnish the mitigation
44 water of sufficient quality, quantity and reliability to eliminate the
45 conflict.



1 (b) Improving the works of diversion and distribution to the
2 holder of an existing water right.

3 (c) Providing a new well to the holder of an existing right or
4 the owner of an existing domestic well.

5 (d) Reducing or relocating the quantity of water diverted by the
6 applicant or a holder of a water right with a later priority.

7 (e) Any other measure or action that may be necessary to
8 eliminate the conflict.

9 5. The State Engineer shall deny a monitoring, management
10 and mitigation plan if he or she determines that the plan does not
11 eliminate the conflicts.

12 **Sec. 4. 1. Before approving a monitoring, management and**
13 **mitigation plan, the State Engineer shall:**

14 (a) Make available on the Internet website of the State
15 Engineer all evidence that the State Engineer is considering to
16 determine whether to approve the plan.

17 (b) Send notice of the availability of such evidence by certified
18 mail to:

19 (1) The applicant;

20 (2) The holders of existing rights and owners of existing
21 domestic wells with whom the application may conflict; and

22 (3) All persons who filed a protest against the granting of
23 the application pursuant to NRS 533.365.

24 (c) Allow for a period during which any person described in
25 paragraph (b) may submit any comment, analysis or other
26 information in response to the application and proposed
27 monitoring, management and mitigation plan.

28 (d) Comply with the provisions of NRS 533.353, if applicable.

29 2. The State Engineer may consider any comment on the
30 application or the monitoring, management and mitigation plan
31 submitted:

32 (a) By any person to whom the State Engineer provided notice
33 pursuant to paragraph (b) of subsection 1; or

34 (b) Jointly by the applicant and any person to whom the
35 State Engineer provided notice pursuant to paragraph (b) of
36 subsection 1.

37 3. If the State Engineer approves a monitoring, management
38 and mitigation plan, the State Engineer shall:

39 (a) Send notice of the approval by certified mail to each person
40 to whom the State Engineer provided notice pursuant to
41 paragraph (b) of subsection 1;

42 (b) Post notice of the approval on the Internet website of the
43 State Engineer; and

44 (c) Enforce the provisions of the monitoring, management or
45 mitigation plan.



1 4. *The applicant must pay the cost of the notices required*
2 *pursuant to this section.*

3 5. *Judicial review pursuant to NRS 533.450 of a monitoring,*
4 *management and mitigation plan approved by the State Engineer*
5 *must occur at the same time the approval or rejection of the*
6 *application by the State Engineer is subject to judicial review.*

7 **Sec. 5.** *If a monitoring, management or mitigation plan that*
8 *is approved by the State Engineer requires the applicant to furnish*
9 *mitigation water to a holder of existing rights or owner of an*
10 *existing domestic well:*

11 1. *Before mitigation water is furnished, the person who will*
12 *be furnishing the mitigation water must file a notice with the State*
13 *Engineer setting forth:*

14 (a) *The quantity of water that will be furnished;*

15 (b) *The duration of time that the water will be furnished;*

16 (c) *The place of use of the water that will be furnished; and*

17 (d) *The number associated with the permit, certificate or vested*
18 *right of the existing right, the number associated with the well log*
19 *or the locations of the existing domestic wells that will receive the*
20 *water, as applicable.*

21 2. *The person furnishing mitigation water is not required to*
22 *submit an application pursuant to NRS 533.345 for a permit to*
23 *change the point of diversion, manner of use or place of use of the*
24 *mitigation water provided that the State Engineer considered the*
25 *furnishing of mitigation water as part of the original monitoring,*
26 *management and mitigation plan.*

27 3. *The time periods for cancellation, forfeiture and*
28 *abandonment of a water right pursuant to NRS 533.060, 533.410*
29 *and 534.090 and for filing proof of beneficial use under the terms*
30 *of a permit to appropriate water are tolled for as long as mitigation*
31 *water must be furnished.*

32 4. *The holder of an existing right or owner of an existing*
33 *domestic well is not entitled to a specific source of water.*

34 **Sec. 6.** 1. *The State Engineer may consider an amendment*
35 *to an approved monitoring, management and mitigation plan*
36 *proposed by:*

37 (a) *The applicant who submitted the monitoring, management*
38 *and mitigation plan;*

39 (b) *A holder of an existing right or the owner of an existing*
40 *domestic well with whom the applicant may conflict; or*

41 (c) *Any person who filed a protest to an application pursuant*
42 *to NRS 533.365.*

43 2. *A proposed amendment must be accompanied by*
44 *substantial evidence that demonstrates the feasibility and*



1 *effectiveness of the amendment in eliminating the conflict or*
2 *conflicts.*

3 *3. Before approving an amendment to a monitoring,*
4 *management and mitigation plan, the State Engineer shall:*

5 *(a) Make available on the Internet website of the State*
6 *Engineer all evidence that the State Engineer is considering to*
7 *determine whether to approve the amendment.*

8 *(b) Send notice of the availability of such evidence by certified*
9 *mail to all persons to whom the State Engineer sent notice of the*
10 *original monitoring, management and mitigation plan.*

11 *(c) Allow for a period during which any person to whom the*
12 *State Engineer sent notice of the original monitoring,*
13 *management and mitigation plan may submit any comment,*
14 *analysis or other information in response to the proposed*
15 *amendment to the monitoring, management and mitigation plan*
16 *for the consideration of the State Engineer.*

17 *(d) Comply with the provisions of NRS 533.353, if applicable.*

18 *4. If the State Engineer approves an amendment to a*
19 *monitoring, management and mitigation plan, the State Engineer*
20 *shall:*

21 *(a) Send notice of the approval by certified mail to each person*
22 *to whom the State Engineer provided notice pursuant to*
23 *paragraph (b) of subsection 3;*

24 *(b) Post notice of the approval on the Internet website of the*
25 *State Engineer; and*

26 *(c) Enforce the provisions of the amendment to the*
27 *monitoring, management and mitigation plan.*

28 *5. The applicant or person requesting the amendment must*
29 *pay the cost of the notices required pursuant to this section.*

30 *6. The State Engineer may require a person who has*
31 *submitted a monitoring, management and mitigation plan to*
32 *conduct additional monitoring or change the location of the*
33 *monitoring. Such a request by the State Engineer is not subject to*
34 *the provisions of this section if the State Engineer determines that*
35 *the existing rights, protectable interests in existing domestic wells*
36 *and important environmental resources will continue to be*
37 *protected under the modified monitoring provisions.*

38 **Sec. 7.** NRS 533.005 is hereby amended to read as follows:

39 533.005 As used in this chapter, unless the context otherwise
40 requires, the words and terms defined in NRS 533.007 to 533.023,
41 inclusive, *and sections 2 and 2.5 of this act* have the meanings
42 ascribed to them in those sections.

43 **Sec. 7.5.** NRS 533.024 is hereby amended to read as follows:

44 533.024 The Legislature declares that:

45 1. It is the policy of this State:



1 (a) To encourage and promote the use of effluent, where that use
2 is not contrary to the public health, safety or welfare, and where that
3 use does not interfere with federal obligations to deliver water of the
4 Colorado River.

5 (b) To recognize the importance of domestic wells as
6 appurtenances to private homes, to create a protectable interest in
7 such wells and to protect their supply of water from unreasonable
8 adverse effects which are caused by municipal, quasi-municipal or
9 industrial uses and which cannot reasonably be mitigated.

10 (c) To encourage the State Engineer to consider the best
11 available science in rendering decisions concerning the available
12 surface and underground sources of water in Nevada.

13 (d) To encourage and promote the use of water to prevent or
14 reduce the spread of wildfire or to rehabilitate areas burned by
15 wildfire, including, without limitation, through the establishment of
16 vegetative cover that is resistant to fire.

17 *(e) To encourage any person applying for a permit to*
18 *appropriate water or to change the point of diversion, place of use*
19 *or manner of use of water to work with holders of existing rights*
20 *and owners of existing wells to address issues or conflicts with the*
21 *application before any hearing that may be held by the State*
22 *Engineer on the application.*

23 *(f) To encourage the use of monitoring, management and*
24 *mitigation plans to:*

25 *(1) Identify potential issues with future water development;*

26 *(2) Seek to avoid conflicts with existing rights, protectable*
27 *interests in existing domestic wells and the public interest;*

28 *(3) Ensure any proposed interbasin transfer of*
29 *groundwater is environmentally sound;*

30 *(4) Manage groundwater basins consistent with the*
31 *doctrine of prior appropriation; and*

32 *(5) When necessary, mitigate the impact of an application*
33 *for the purpose of eliminating any conflict with existing rights,*
34 *protectable interests in domestic wells and important*
35 *environmental resources.*

36 2. The procedures in this chapter for changing the place of
37 diversion, manner of use or place of use of water, and for
38 confirming a report of conveyance, are not intended to have the
39 effect of quieting title to or changing ownership of a water right and
40 that only a court of competent jurisdiction has the power to
41 determine conflicting claims to ownership of a water right.

42 *3. The procedures in this chapter regarding the review or*
43 *approval of a monitoring, management and mitigation plan are*
44 *not intended to abrogate the authority of the State Engineer to*



1 *protect existing rights and protectable interests in existing*
2 *domestic wells.*

3 **Sec. 8.** NRS 533.325 is hereby amended to read as follows:

4 533.325 Any person who wishes to appropriate any of the
5 public waters, or, *except as otherwise provided in section 5 of this*
6 *act*, to change the place of diversion, manner of use or place of use
7 of water already appropriated, shall, before performing any work in
8 connection with such appropriation, change in place of diversion or
9 change in manner or place of use, apply to the State Engineer for a
10 permit to do so.

11 **Sec. 9.** NRS 533.353 is hereby amended to read as follows:

12 533.353 1. For each new application to appropriate water for
13 a beneficial use filed on or after January 1, 2012, if the State
14 Engineer requires a monitoring, management and mitigation plan as
15 a condition of appropriating water for a beneficial use, the State
16 Engineer shall, within 30 days after requiring the plan and if
17 requested by the county where the State Engineer has approved the
18 point of diversion, allow the county to participate in an advisory
19 capacity in the development and implementation of the plan.

20 2. Before approving any plan ~~developed pursuant to~~
21 ~~subsection 1~~ *or amendment to a plan*, and during the period in
22 which the plan, if approved, is carried out, the State Engineer shall
23 consider any comment, analysis or other information submitted by
24 the participating county. The State Engineer is not required to
25 include any comment, analysis or other information submitted by a
26 participating county in a monitoring, management and mitigation
27 plan required pursuant to this section.

28 3. A decision by the State Engineer whether or not to include
29 in the plan or to follow any comment, analysis or other information
30 submitted by a participating county pursuant to this section is not
31 subject to judicial review pursuant to NRS 533.450.

32 **Sec. 10.** NRS 533.370 is hereby amended to read as follows:

33 533.370 1. Except as otherwise provided in this section and
34 NRS 533.345, 533.371, 533.372 and 533.503, the State Engineer
35 shall approve an application submitted in proper form which
36 contemplates the application of water to beneficial use if:

37 (a) The application is accompanied by the prescribed fees;

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

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



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

4 (2) Financial ability and reasonable expectation actually to
5 construct the work and apply the water to the intended beneficial use
6 with reasonable diligence.

7 2. Except as otherwise provided in subsection 10 **H** and
8 **section 3 of this act**, where there is no unappropriated water in the
9 proposed source of supply, or where its proposed use or change
10 conflicts with existing rights or with protectable interests in existing
11 domestic wells as set forth in NRS 533.024, or threatens to prove
12 detrimental to the public interest, the State Engineer shall reject the
13 application and refuse to issue the requested permit. If a previous
14 application for a similar use of water within the same basin has been
15 rejected on those grounds, the new application may be denied
16 without publication.

17 3. In addition to the criteria set forth in subsections 1 and 2 **H**
18 **and section 3 of this act**, in determining whether an application for
19 an interbasin transfer of groundwater must be rejected pursuant to
20 this section, the State Engineer shall consider:

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

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

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

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

32 (e) Any other factor the State Engineer determines to be
33 relevant.

34 4. Except as otherwise provided in this subsection and
35 subsections 6 and 10 and NRS 533.365, the State Engineer shall
36 approve or reject each application within 2 years after the final date
37 for filing a protest. The State Engineer may postpone action:

38 (a) Upon written authorization to do so by the applicant.

39 (b) If an application is protested.

40 (c) If the purpose for which the application was made is
41 municipal use.

42 (d) In areas where studies of water supplies have been
43 determined to be necessary by the State Engineer pursuant to
44 NRS 533.368.



1 (e) Where court actions or adjudications are pending, which may
2 affect the outcome of the application.

3 (f) In areas in which adjudication of vested water rights is
4 deemed necessary by the State Engineer.

5 (g) On an application for a permit to change a vested water right
6 in a basin where vested water rights have not been adjudicated.

7 (h) Where authorized entry to any land needed to use the water
8 for which the application is submitted is required from a
9 governmental agency.

10 (i) On an application for which the State Engineer has required
11 additional information pursuant to NRS 533.375.

12 5. If the State Engineer does not act upon an application in
13 accordance with subsections 4 and 6, the application remains active
14 until approved or rejected by the State Engineer.

15 6. Except as otherwise provided in this subsection and
16 subsection 10, the State Engineer shall approve or reject, within 6
17 months after the final date for filing a protest, an application filed to
18 change the point of diversion of water already appropriated when
19 the existing and proposed points of diversion are on the same
20 property for which the water has already been appropriated under
21 the existing water right or the proposed point of diversion is on real
22 property that is proven to be owned by the applicant and is
23 contiguous to the place of use of the existing water right. The State
24 Engineer may postpone action on the application pursuant to
25 subsection 4.

26 7. If the State Engineer has not approved, rejected or held a
27 hearing on an application within 7 years after the final date for filing
28 a protest, the State Engineer shall cause notice of the application to
29 be republished pursuant to NRS 533.360 immediately preceding
30 the time at which the State Engineer is ready to approve or reject the
31 application. The cost of the republication must be paid by the
32 applicant. After such republication, a protest may be filed in
33 accordance with NRS 533.365.

34 8. If a hearing is held regarding an application, the decision of
35 the State Engineer must be in writing and include findings of fact,
36 conclusions of law and a statement of the underlying facts
37 supporting the findings of fact. The written decision may take the
38 form of a transcription of an oral ruling. The rejection or approval of
39 an application must be endorsed on a copy of the original
40 application, and a record must be made of the endorsement in the
41 records of the State Engineer. The copy of the application so
42 endorsed must be returned to the applicant. Except as otherwise
43 provided in subsection 11, if the application is approved, the
44 applicant may, on receipt thereof, proceed with the construction of
45 the necessary works and take all steps required to apply the water to



1 beneficial use and to perfect the proposed appropriation. If the
2 application is rejected, the applicant may take no steps toward
3 the prosecution of the proposed work or the diversion and use of the
4 public water while the rejection continues in force.

5 9. If a person is the successor in interest of an owner of a water
6 right or an owner of real property upon which a domestic well is
7 located and if the former owner of the water right or real property on
8 which a domestic well is located had previously filed a written
9 protest against the granting of an application, the successor in
10 interest must be allowed to pursue that protest in the same manner
11 as if the successor in interest were the former owner whose interest
12 he or she succeeded. If the successor in interest wishes to pursue the
13 protest, the successor in interest must notify the State Engineer in a
14 timely manner on a form provided by the State Engineer.

15 10. The provisions of subsections 1 to 9, inclusive, do not
16 apply to an application for an environmental permit or a temporary
17 permit issued pursuant to NRS 533.436 or 533.504.

18 11. The provisions of subsection 8 do not authorize the
19 recipient of an approved application to use any state land
20 administered by the Division of State Lands of the State Department
21 of Conservation and Natural Resources without the appropriate
22 authorization for that use from the State Land Registrar.

23 12. As used in this section ~~+, “domestic”~~ :

24 (a) **“Domestic well”** has the meaning ascribed to it in
25 NRS 534.350.

26 (b) **“Unappropriated water” means the quantity of**
27 **groundwater that is:**

28 (1) **Available for appropriation based on the perennial yield**
29 **of the source of supply which does not require the actual capture**
30 **of the recharge or discharge from the source of supply; and**

31 (2) **Not committed to existing permitted, certificated,**
32 **federally reserved, decreed or vested water rights.**

33 **Sec. 11.** NRS 533.371 is hereby amended to read as follows:

34 533.371 The State Engineer shall reject the application and
35 refuse to issue a permit to appropriate water for a specified period if
36 the State Engineer determines that:

37 1. The application is incomplete;

38 2. The prescribed fees have not been paid;

39 3. The proposed use is not temporary;

40 4. There is no water available from the proposed source of
41 supply without exceeding the perennial yield ~~for safe yield~~ of that
42 source;

43 5. The proposed use conflicts with existing rights ~~+~~ **and the**
44 **conflict cannot be eliminated through the use of a monitoring,**
45 **management and mitigation plan; or**



1 6. The proposed use threatens to prove detrimental to the
2 public interest.

3 **Sec. 12.** NRS 533.410 is hereby amended to read as follows:

4 533.410 ~~##~~ *Except as otherwise provided in section 5 of this*
5 *act, if* any holder of a permit from the State Engineer fails, before
6 the date set for filing in the permit or the date set by any extension
7 granted by the State Engineer, to file with the State Engineer proof
8 of application of water to beneficial use, and the accompanying
9 map, if a map is required, the State Engineer shall advise the holder
10 of the permit, by registered or certified mail, that the permit is held
11 for cancellation. If the holder, within 30 days after the mailing of
12 this notice, fails to file with the State Engineer the required affidavit
13 and map, if a map is required, or an application for an extension of
14 time to file the instruments, the State Engineer shall cancel the
15 permit. For good cause shown, upon application made before the
16 expiration of the 30-day period, the State Engineer may grant an
17 extension of time in which to file the instruments.

18 **Sec. 13.** NRS 533.450 is hereby amended to read as follows:

19 533.450 1. Except as otherwise provided in NRS 533.353,
20 any person feeling aggrieved by any order or decision of the State
21 Engineer, acting in person or through the assistants of the State
22 Engineer or the water commissioner, affecting the person's interests,
23 when the order or decision relates to the administration of
24 determined rights or is made pursuant to NRS 533.270 to 533.445,
25 inclusive, *and sections 3 to 6, inclusive, of this act*, or NRS
26 533.481, 534.193, 535.200 or 536.200, may have the same reviewed
27 by a proceeding for that purpose, insofar as may be in the nature of
28 an appeal, which must be initiated in the proper court of the county
29 in which the matters affected or a portion thereof are situated, but on
30 stream systems where a decree of court has been entered, the action
31 must be initiated in the court that entered the decree. The order or
32 decision of the State Engineer remains in full force and effect unless
33 proceedings to review the same are commenced in the proper court
34 within 30 days after the rendition of the order or decision in
35 question and notice thereof is given to the State Engineer as
36 provided in subsection 3.

37 2. The proceedings in every case must be heard by the court,
38 and must be informal and summary, but full opportunity to be heard
39 must be had before judgment is pronounced.

40 3. No such proceedings may be entertained unless notice
41 thereof, containing a statement of the substance of the order or
42 decision complained of, and of the manner in which the same
43 injuriously affects the petitioner's interests, has been served upon
44 the State Engineer, personally or by registered or certified mail, at
45 the Office of the State Engineer at the State Capital within 30 days



1 following the rendition of the order or decision in question. A
2 similar notice must also be served personally or by registered or
3 certified mail upon the person who may have been affected by the
4 order or decision.

5 4. Where evidence has been filed with, or testimony taken
6 before, the State Engineer, a transcribed copy thereof, or of any
7 specific part of the same, duly certified as a true and correct
8 transcript in the manner provided by law, must be received in
9 evidence with the same effect as if the reporter were present and
10 testified to the facts so certified. A copy of the transcript must be
11 furnished on demand, at actual cost, to any person affected by the
12 order or decision, and to all other persons on payment of a
13 reasonable amount therefor, to be fixed by the State Engineer.

14 5. An order or decision of the State Engineer must not be
15 stayed unless the petitioner files a written motion for a stay with the
16 court and serves the motion personally or by registered or certified
17 mail upon the State Engineer, the applicant or other real party in
18 interest and each party of record within 10 days after the petitioner
19 files the petition for judicial review. Any party may oppose the
20 motion and the petitioner may reply to any such opposition. In
21 determining whether to grant or deny the motion for a stay, the court
22 shall consider:

23 (a) Whether any nonmoving party to the proceeding may incur
24 any harm or hardship if the stay is granted;

25 (b) Whether the petitioner may incur any irreparable harm if the
26 stay is denied;

27 (c) The likelihood of success of the petitioner on the merits; and

28 (d) Any potential harm to the members of the public if the stay
29 is granted.

30 6. Except as otherwise provided in this subsection, the
31 petitioner must file a bond in an amount determined by the court,
32 with sureties satisfactory to the court and conditioned in the manner
33 specified by the court. The bond must be filed within 5 days after
34 the court determines the amount of the bond pursuant to this
35 subsection. If the petitioner fails to file the bond within that period,
36 the stay is automatically denied. A bond must not be required for a
37 public agency of this State or a political subdivision of this State.

38 7. Costs must be paid as in civil cases brought in the district
39 court, except by the State Engineer or the State.

40 8. The practice in civil cases applies to the informal and
41 summary character of such proceedings, as provided in this section.

42 9. Appeals may be taken to the appellate court of competent
43 jurisdiction pursuant to the rules fixed by the Supreme Court
44 pursuant to Section 4 of Article 6 of the Nevada Constitution from



1 the judgment of the district court in the same manner as in other
2 civil cases.

3 10. The decision of the State Engineer is prima facie correct,
4 and the burden of proof is upon the party attacking the same.

5 11. Whenever it appears to the State Engineer that any
6 litigation, whether now pending or hereafter brought, may adversely
7 affect the rights of the public in water, the State Engineer shall
8 request the Attorney General to appear and protect the interests of
9 the State.

10 **Sec. 14.** NRS 533.475 is hereby amended to read as follows:

11 533.475 The State Engineer and the assistants of the State
12 Engineer shall have power to arrest any person violating any of the
13 provisions of NRS 533.005 to 533.470, inclusive, *and sections 3 to*
14 *6, inclusive, of this act* and to turn that person over to the sheriff or
15 other competent police officer within the county. Immediately on
16 delivering any such person so arrested into the custody of the
17 sheriff, the State Engineer or assistant making such arrest shall
18 immediately, in writing, and upon oath, make a complaint before the
19 justice of the peace against the person so arrested.

20 **Sec. 15.** NRS 533.480 is hereby amended to read as follows:

21 533.480 Any person violating any of the provisions of NRS
22 533.005 to 533.475, inclusive, *and sections 3 to 6, inclusive, of this*
23 *act* shall be guilty of a misdemeanor.

24 **Sec. 16.** NRS 533.515 is hereby amended to read as follows:

25 533.515 1. No permit for the appropriation of water or
26 application to change the point of diversion under an existing water
27 right may be denied because of the fact that the point of diversion
28 described in the application for the permit, or any portion of the
29 works in the application described and to be constructed for the
30 purpose of storing, conserving, diverting or distributing the water
31 are situated in any other state; but in all such cases where the place
32 of intended use, or the lands, or part of the lands to be irrigated by
33 means of the water, are situated within this state, the permit must be
34 issued as in other cases, pursuant to the provisions of NRS 533.324
35 to 533.450, inclusive, *and sections 3 to 6, inclusive, of this act*, and
36 chapter 534 of NRS.

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

41 **Sec. 17.** NRS 533.520 is hereby amended to read as follows:

42 533.520 1. Any person who files an application for a permit
43 to appropriate water from above or beneath the surface of the
44 ground for use outside this State, or to change the point of diversion
45 under an existing water right which has a place of use outside of this



1 State, or to change the place of use of water from a location in this
2 State to a location outside this State under an existing right, must
3 file an application with the State Engineer for a permit to do so
4 pursuant to provisions of NRS 533.324 to 533.450, inclusive, *and*
5 *sections 3 to 6, inclusive, of this act*, and chapter 534 of NRS.

6 2. The State Engineer may approve such an application if the
7 State Engineer determines that the applicant's use of the water
8 outside this State complies with the requirements of NRS 533.324 to
9 533.450, inclusive, *and sections 3 to 6, inclusive, of this act*, and
10 those provisions of chapter 534 of NRS pertaining to the
11 appropriation of water. In making the determination, the State
12 Engineer shall consider:

13 (a) The supply of water available in this State;

14 (b) The current and reasonably anticipated demands for water in
15 this State;

16 (c) The current or reasonably anticipated shortages of water in
17 this State;

18 (d) Whether the water that is the subject of the application could
19 feasibly be used to alleviate current or reasonably anticipated
20 shortages of water in this State;

21 (e) The supply and sources of water available to the applicant in
22 the state in which the applicant intends to use the water;

23 (f) The demands placed on the applicant's supply of water in the
24 state in which he or she intends to use the water; and

25 (g) Whether the request in the application is reasonable, taking
26 into consideration the factors set forth in paragraphs (a) to (f),
27 inclusive.

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

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

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

44 6. Upon submittal of an application under this section, the
45 applicant and, if the applicant is a natural person, the personal



1 representative of the person, are subject to the jurisdiction of the
2 courts of this State and to service of process as provided in
3 NRS 14.065.

4 **Sec. 18.** NRS 534.090 is hereby amended to read as follows:

5 534.090 1. Except as otherwise provided in this section **H**
6 **and section 5 of this act**, failure for 5 successive years after
7 April 15, 1967, on the part of the holder of any right, whether it is
8 an adjudicated right, an unadjudicated right or a right for which a
9 certificate has been issued pursuant to NRS 533.425, and further
10 whether the right is initiated after or before March 25, 1939, to use
11 beneficially all or any part of the underground water for the purpose
12 for which the right is acquired or claimed, works a forfeiture of both
13 undetermined rights and determined rights to the use of that water to
14 the extent of the nonuse. If the records of the State Engineer or any
15 other documents specified by the State Engineer indicate at least 4
16 consecutive years, but less than 5 consecutive years, of nonuse of all
17 or any part of a water right which is governed by this chapter, the
18 State Engineer shall notify the owner of the water right, as
19 determined in the records of the Office of the State Engineer, by
20 registered or certified mail that the owner has 1 year after the date of
21 the notice in which to use the water right beneficially and to provide
22 proof of such use to the State Engineer or apply for relief pursuant
23 to subsection 2 to avoid forfeiting the water right. If, after 1 year
24 after the date of the notice, proof of resumption of beneficial use is
25 not filed in the Office of the State Engineer, the State Engineer
26 shall, unless the State Engineer has granted a request to extend the
27 time necessary to work a forfeiture of the water right, declare the
28 right forfeited within 30 days. Upon the forfeiture of a right to
29 the use of groundwater, the water reverts to the public and is
30 available for further appropriation, subject to existing rights. If,
31 upon notice by registered or certified mail to the owner of record
32 whose right has been declared forfeited, the owner of record fails to
33 appeal the ruling in the manner provided for in NRS 533.450, and
34 within the time provided for therein, the forfeiture becomes final.
35 The failure to receive a notice pursuant to this subsection does not
36 nullify the forfeiture or extend the time necessary to work the
37 forfeiture of a water right.

38 2. The State Engineer may, upon the request of the holder of
39 any right described in subsection 1, extend the time necessary to
40 work a forfeiture under that subsection if the request is made before
41 the expiration of the time necessary to work a forfeiture. The State
42 Engineer may grant, upon request and for good cause shown, any
43 number of extensions, but a single extension must not exceed 1 year.
44 In determining whether to grant or deny a request, the State
45 Engineer shall, among other reasons, consider:



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1 (a) Whether the holder has shown good cause for the holder's
2 failure to use all or any part of the water beneficially for the purpose
3 for which the holder's right is acquired or claimed;

4 (b) The unavailability of water to put to a beneficial use which is
5 beyond the control of the holder;

6 (c) Any economic conditions or natural disasters which made
7 the holder unable to put the water to that use;

8 (d) Any prolonged period in which precipitation in the basin
9 where the water right is located is below the average for that basin
10 or in which indexes that measure soil moisture show that a deficit in
11 soil moisture has occurred in that basin;

12 (e) Whether a groundwater management plan has been approved
13 for the basin pursuant to NRS 534.037; and

14 (f) Whether the holder has demonstrated efficient ways of using
15 the water for agricultural purposes, such as center-pivot irrigation.

16 ➔ The State Engineer shall notify, by registered or certified mail,
17 the owner of the water right, as determined in the records of the
18 Office of the State Engineer, of whether the State Engineer has
19 granted or denied the holder's request for an extension pursuant to
20 this subsection. If the State Engineer grants an extension pursuant to
21 this subsection and, before the expiration of that extension, proof of
22 resumption of beneficial use or another request for an extension is
23 not filed in the Office of the State Engineer, the State Engineer shall
24 declare the water right forfeited within 30 days after the expiration
25 of the extension granted pursuant to this subsection.

26 3. If the failure to use the water pursuant to subsection 1 is
27 because of the use of center-pivot irrigation before July 1, 1983, and
28 such use could result in a forfeiture of a portion of a right, the State
29 Engineer shall, by registered or certified mail, send to the owner of
30 record a notice of intent to declare a forfeiture. The notice must
31 provide that the owner has at least 1 year after the date of the notice
32 to use the water beneficially or apply for additional relief pursuant
33 to subsection 2 before forfeiture of the owner's right is declared by
34 the State Engineer.

35 4. A right to use underground water whether it is vested or
36 otherwise may be lost by abandonment. If the State Engineer, in
37 investigating a groundwater source, upon which there has been a
38 prior right, for the purpose of acting upon an application to
39 appropriate water from the same source, is of the belief from his or
40 her examination that an abandonment has taken place, the State
41 Engineer shall so state in the ruling approving the application. If,
42 upon notice by registered or certified mail to the owner of record
43 who had the prior right, the owner of record of the prior right fails to
44 appeal the ruling in the manner provided for in NRS 533.450, and



1 within the time provided for therein, the alleged abandonment
2 declaration as set forth by the State Engineer becomes final.

3 **Sec. 19.** NRS 534.110 is hereby amended to read as follows:

4 534.110 1. The State Engineer shall administer this chapter
5 and shall prescribe all necessary regulations within the terms of this
6 chapter for its administration.

7 2. The State Engineer may:

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

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

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

18 (a) For municipal, quasi-municipal or industrial use; and

19 (b) Whose reasonably expected rate of diversion is one-half
20 cubic foot per second or more,

21 ➔ to report periodically to the State Engineer concerning the effect
22 of that well on other previously existing wells that are located within
23 2,500 feet of the well.

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

33 5. This section does not prevent the granting of permits to
34 applicants later in time on the ground that the diversions under the
35 proposed later appropriations may cause the water level to be
36 lowered at the point of diversion of a prior appropriator, so long as
37 any protectable interests in existing domestic wells as set forth in
38 NRS 533.024 and the rights of holders of existing appropriations
39 can be satisfied under ~~such express conditions;~~ *the terms of the*
40 *permit or a monitoring, management and mitigation plan.* At the
41 time a permit is granted for a well:

42 (a) For municipal, quasi-municipal or industrial use; and

43 (b) Whose reasonably expected rate of diversion is one-half
44 cubic foot per second or more,



1 ↳ the State Engineer shall include as a condition of the permit that
2 pumping water pursuant to the permit may be limited or prohibited
3 to prevent any unreasonable adverse effects on an existing domestic
4 well located within 2,500 feet of the well, unless the holder of the
5 permit and the owner of the domestic well have agreed to alternative
6 measures that mitigate those adverse effects.

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

15 7. The State Engineer:

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

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

25 ↳ The designation of a basin as a critical management area pursuant
26 to this subsection may be appealed pursuant to NRS 533.450. If a
27 basin has been designated as a critical management area for at least
28 10 consecutive years, the State Engineer shall order that
29 withdrawals, including, without limitation, withdrawals from
30 domestic wells, be restricted in that basin to conform to priority
31 rights, unless a groundwater management plan has been approved
32 for the basin pursuant to NRS 534.037.

33 8. In any basin or portion thereof in the State designated by the
34 State Engineer, the State Engineer may restrict drilling of wells in
35 any portion thereof if the State Engineer determines that additional
36 wells would cause an undue interference with existing wells. Any
37 order or decision of the State Engineer so restricting drilling of such
38 wells may be reviewed by the district court of the county pursuant to
39 NRS 533.450.

40 9. *As used in this section, "perennial yield" has the meaning*
41 *ascribed to it in section 2 of this act.*

42 **Sec. 20.** The Legislature hereby declares that:

43 1. It has examined the past and present practice of the State
44 Engineer with respect to the approval of an application to
45 appropriate water or to change the point of diversion, manner of use



1 or place of use subject to the development and implementation of a
2 monitoring, management and mitigation plan and finds that the State
3 Engineer has applied the provisions of Nevada law relating to such
4 actions in a manner consistent with the provisions of this act.

5 2. The provisions of this act are intended to clarify rather than
6 change the existing application of chapters 533 and 534 of NRS
7 relating to the approval of an application to appropriate water or to
8 change the point of diversion, manner of use or place of use subject
9 to the development and implementation of a monitoring,
10 management and mitigation plan, and to promote thereby stability
11 and consistency in the administration of chapters 533 and 534 of
12 NRS.

13 **Sec. 21.** This act becomes effective upon passage and approval
14 and, to the extent that it applies to applications for a permit to
15 appropriate water or to change the point of diversion, manner of use
16 or place of use submitted to the State Engineer on or before the
17 effective date of this act or to existing water rights or protectable
18 interests in an existing domestic well with a priority date on or
19 before the effective date of this act, shall apply to such applications,
20 water rights and protectable interests retroactively and
21 prospectively.

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