

Amendment No. 359

Assembly Amendment to Assembly Bill No. 298	(BDR 48-735)
Proposed by: Assembly Committee on Natural Resources, Agriculture, and Mining	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date		SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>

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; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EMR/HAC



Date: 4/19/2017

A.B. No. 298—Revises provisions relating to water. (BDR 48-735)



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 ~~“environmentally sound” and~~ “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 permit to
2 appropriate water to beneficial use if there is no unappropriated water at the source of supply
3 or if the proposed use of the water or change conflicts with existing rights or protectable
4 interests in existing domestic wells or threatens to prove detrimental to the public interest.
5 (NRS 533.370) **Section 3** of this bill provides that ~~(before rejecting)~~ when reviewing an
6 application, ~~(because the proposed use conflicts with existing rights or protectable interests.)~~
7 the State Engineer may consider whether a monitoring, management and mitigation plan will
8 eliminate the conflicts, ~~(with existing rights, protectable interests, the public interest or~~
9 the environmental soundness of an interbasin transfer of groundwater. **Section 3** also
10 sets forth the 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, ~~(and determine whether there is~~
12 substantial evidence that the plan will eliminate the conflicts.) **Section 5** of this bill sets forth
13 certain requirements if, as part of a monitoring, management or mitigation plan, a person is
14 required to furnish ~~(replacement)~~ mitigation water to a holder of existing rights or owner of
15 ~~(an existing)~~ an existing domestic well. **Section 6** of this bill authorizes the State Engineer to ~~(approve)~~
16 consider an amendment to a monitoring, management or mitigation plan. **Section 6 also**
17 authorizes the State Engineer, under certain circumstances, to require certain changes
18 to the monitoring provisions of a monitoring, management and mitigation plan without
19 complying with the requirements for a proposed amendment. **Section 7.5 of this bill**
20 provides that it is the policy of this State to address issues and conflicts related to certain

21 applications for water and to encourage the use of monitoring, management and
 22 mitigation plans under certain circumstances. Sections 8-19 of this bill make conforming
 23 changes.

24 Existing law: (1) requires the State Engineer to reject an application for a permit to
 25 appropriate water if the State Engineer determines that there is no water available from the
 26 proposed source of supply without exceeding the perennial yield of that source; (2) authorizes
 27 the State Engineer to designate as a critical management area any basin which withdrawals of
 28 groundwater consistently exceed the perennial yield of the basin; and (3) requires the State
 29 Engineer to designate as a critical management area any basin in which withdrawals of
 30 groundwater consistently exceed the perennial yield of the basin upon receipt of certain
 31 petitions (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 of
 34 groundwater, existing law requires the State Engineer to consider whether the proposed
 35 interbasin transfer is environmentally sound. (NRS 533.370) Section ~~10~~ 2.5 of this bill
 36 defines the term “environmentally sound” for this purpose.

37 Existing law requires the State Engineer to reject an application for a permit if there is no
 38 unappropriated water in the proposed source of supply. (NRS 533.370) Section 10 defines
 39 “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 thereto the
 2 provisions set forth as sections 2 to 6, inclusive, of this act.

3 Sec. 2. “Perennial yield” means the ~~quantity of water that recharges~~
 4 ~~annually~~ maximum amount of groundwater in a groundwater source of supply
 5 ~~when calculated over a period representative of the average long term conditions~~
 6 ~~off that may be 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 sound” means
 9 that the use of groundwater for an interbasin transfer of water will not cause:

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

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

16 Sec. 3. 1. ~~Before rejecting~~ In reviewing an application ~~because the~~
 17 ~~proposed use or change conflicts~~ to appropriate water or to change the point of
 18 ~~diversion, manner of use or place of use pursuant to NRS 533.370 or holding a~~
 19 ~~hearing on such an application, the State Engineer may require an applicant to~~
 20 ~~submit a monitoring, management and mitigation plan to address any conflict~~
 21 ~~with existing rights, for~~ protectable interests in domestic wells as set forth in
 22 ~~NRS 533.024, the State Engineer may consider whether of public interest or the~~
 23 ~~environmental soundness of an interbasin transfer of groundwater. If the State~~
 24 ~~Engineer determines during a hearing on an application that a monitoring,~~
 25 ~~management and mitigation plan is required, he or she may postpone the hearing~~
 26 ~~pending his or her review of the monitoring, management and mitigation plan.~~

27 2. A monitoring, management and mitigation plan ~~will eliminate the~~
 28 ~~conflict. The plan~~ must be ~~in the form prescribed by the State Engineer and be~~
 29 ~~accompanied~~ :

1 (a) Accompanied by substantial evidence that demonstrates the feasibility
 2 and effectiveness of the plan in eliminating the conflict ~~;~~

3 ~~2.) or conflicts; and~~

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

6 3. A monitoring, management and mitigation plan must include, without
 7 limitation:

8 (a) A list of the ~~holders~~ locations of existing rights and ~~owners of~~
 9 domestic wells, and any important environmental resources with ~~whom~~ which
 10 the application ~~conflicts~~ may conflict;

11 (b) An explanation of how all conflicts with existing rights, ~~and~~ protectable
 12 interests in existing domestic wells, the public interest and the environmental
 13 soundness of an interbasin transfer of groundwater, as applicable, will be
 14 eliminated through the measures set forth in the plan;

15 (c) A ~~proposal for how the applicant will~~ plan to monitor the impact on
 16 ~~holders of~~ existing rights ~~and owners of~~, existing domestic wells and
 17 important environmental resources if the State Engineer approves the
 18 application; ~~and~~

19 (d) Triggers ~~;~~ and thresholds ~~;~~ standards and procedures for implementing
 20 the plan;

21 ~~3.) to avoid, manage and mitigate any conflicts;~~

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

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

25 4. A monitoring, management and mitigation plan may ~~require an~~
 26 ~~applicant to take~~ include, without limitation, one or more of the following
 27 actions to eliminate ~~the conflict~~ any conflicts:

28 (a) Furnishing ~~replacement~~ mitigation water of a sufficient quantity, ~~and~~
 29 quality ~~;~~ and reliability for the approved beneficial use of an existing right or
 30 existing domestic well. If a monitoring, management and mitigation plan requires
 31 the applicant to furnish ~~replacement~~ mitigation water, the applicant must
 32 demonstrate by substantial evidence that the applicant has the ability to furnish
 33 the ~~replacement~~ mitigation water of sufficient quality, ~~and~~ quantity and
 34 reliability to eliminate the conflict.

35 (b) Improving the works of diversion and distribution to the holder of ~~;~~ an
 36 existing water right.

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

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

41 ~~(d) Financial assurances to ensure performance by the applicant;~~

42 ~~(e) Financial compensation of holders of existing rights and owners of~~
 43 ~~domestic wells;~~

44 ~~(f) (e) Any other measure or action that may be necessary to eliminate the~~
 45 ~~conflict.~~

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

48 ~~Sec. 4. 1. [The State Engineer must review a monitoring, management~~
 49 ~~and mitigation plan and determine whether there is substantial evidence that~~
 50 ~~implementation of the plan will eliminate the conflicts with existing rights and~~
 51 ~~protectable interests in domestic wells.~~

52 ~~2.) Before approving a monitoring, management and mitigation plan, the~~
 53 ~~State Engineer shall:~~

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

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

4 (1) The applicant;

5 (2) The holders of existing rights and owners of existing domestic wells
6 with whom the application ~~conflicts;~~

7 ~~(2) All holders of existing rights whose point of diversion is located~~
8 ~~within 2,500 feet of the point of diversion of the applicant;~~ may conflict; and

9 (3) All persons who filed a protest against the granting of the application
10 pursuant to NRS 533.365 ~~;~~ and

11 ~~(4) Any person who has requested that the State Engineer provide such~~
12 ~~notice.~~

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

16 (d) Comply with the provisions of NRS 533.353 ~~;~~ , if applicable.

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

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

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

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

25 (a) Send notice of the approval by certified mail to each person to whom the
26 State Engineer provided notice pursuant to paragraph (b) of subsection ~~2;~~ 1;

27 (b) Post notice of the approval on the Internet website of the State Engineer;
28 and

29 (c) Enforce the provisions of the monitoring, management or mitigation
30 plan.

31 4. The applicant must pay the cost of the notices required pursuant to this
32 section.

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

37 Sec. 5. If a monitoring, management or mitigation plan that is approved by
38 the State Engineer requires the applicant to furnish ~~replacement~~ mitigation
39 water to a holder of existing rights or owner of ~~an~~ an existing domestic well:

40 1. Before ~~replacement~~ mitigation water is furnished, the person who will
41 be furnishing the ~~replacement~~ mitigation water must file a notice with the State
42 Engineer setting forth:

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

44 (b) The duration of time that the water will be furnished; ~~and~~

45 (c) The place of use of the water that will be furnished ~~;~~ and

46 (d) The number associated with the permit, certificate or vested right of the
47 existing right, the number associated with the well log or the locations of the
48 existing domestic wells that will receive the water, as applicable.

49 2. The person furnishing ~~replacement~~ mitigation water is not required to
50 submit an application pursuant to NRS 533.345 for a permit to change the point
51 of diversion, manner of use or place of use of the ~~replacement~~ mitigation water
52 ~~;~~ provided that the State Engineer considered the furnishing of mitigation water
53 as part of the original monitoring, management and mitigation plan.

1 3. The time periods for ~~cancellation~~, forfeiture and abandonment of a water
2 right pursuant to NRS 533.060 , 533.410 and 534.090 and for filing proof of
3 beneficial use under the terms of a permit to appropriate water are tolled for as
4 long as ~~replacement~~ mitigation water must be furnished.

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

7 Sec. 6. 1. The State Engineer may ~~approve~~ consider an amendment to
8 ~~an approved~~ monitoring, management and mitigation plan ~~if~~ proposed by:

9 (a) The applicant who submitted the monitoring, management and
10 mitigation plan;

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

13 (c) Any person who filed a protest to an application pursuant to NRS
14 533.365.

15 2. A proposed amendment must be accompanied by substantial evidence
16 that demonstrates the feasibility and effectiveness of the amendment in
17 eliminating the conflict or conflicts.

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

20 (a) Make available on the Internet website of the State Engineer all evidence
21 that the State Engineer is considering to determine whether to approve the
22 amendment.

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

26 (c) Allow for a period during which any person to whom the State Engineer
27 sent notice of the original monitoring, management and mitigation plan may
28 submit any comment, analysis or other information in response to the proposed
29 amendment to the monitoring, management and mitigation plan ~~if~~ for the
30 consideration of the State Engineer.

31 (d) Comply with the provisions of NRS 533.353 ~~if~~
32 ~~if~~, if applicable.

33 4. If the State Engineer approves an amendment to a monitoring,
34 management and mitigation plan, the State Engineer shall:

35 (a) Send notice of the approval by certified mail to each person to whom the
36 State Engineer provided notice pursuant to paragraph (b) of subsection ~~2~~ 3;

37 (b) Post notice of the approval on the Internet website of the State Engineer;
38 and

39 (c) Enforce the provisions of the amendment to the monitoring, management
40 and mitigation plan.

41 5. The applicant or person requesting the amendment must pay the cost of
42 the notices required pursuant to this section.

43 6. The State Engineer may require a person who has submitted a
44 monitoring, management and mitigation plan to conduct additional monitoring
45 or change the location of the monitoring. Such a request by the State Engineer is
46 not subject to the provisions of this section if the State Engineer determines that
47 the existing rights, protectable interests in existing domestic wells and important
48 environmental resources will continue to be protected under the modified
49 monitoring provisions.

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

51 533.005 As used in this chapter, unless the context otherwise requires, the
52 words and terms defined in NRS 533.007 to 533.023, inclusive, and ~~section~~
53 sections 2 and 2.5 of this act have the meanings ascribed to them in those sections.

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

2 533.024 The Legislature declares that:

3 1. It is the policy of this State:

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

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

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

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

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

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

24 (1) Identify potential issues with future water development;

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

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

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

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

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

39 3. The procedures in this chapter regarding the review or approval of a
40 monitoring, management and mitigation plan are not intended to abrogate the
41 authority of the State Engineer to protect existing rights and protectable interests
42 in existing domestic wells.

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

44 533.325 Any person who wishes to appropriate any of the public waters, or ,
45 *except as otherwise provided in section 5 of this act*, to change the place of
46 diversion, manner of use or place of use of water already appropriated, shall, before
47 performing any work in connection with such appropriation, change in place of
48 diversion or change in manner or place of use, apply to the State Engineer for a
49 permit to do so.

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

51 533.353 1. For each new application to appropriate water for a beneficial
52 use filed on or after January 1, 2012, if the State Engineer requires a monitoring,
53 management and mitigation plan as a condition of appropriating water for a

1 beneficial use, the State Engineer shall, within 30 days after requiring the plan and
2 if requested by the county where the State Engineer has approved the point of
3 diversion, allow the county to participate in an advisory capacity in the
4 development and implementation of the plan.

5 2. Before approving any plan ~~{developed pursuant to subsection 1}~~ *or*
6 *amendment to a plan*, and during the period in which the plan, if approved, is
7 carried out, the State Engineer shall consider any comment, analysis or other
8 information submitted by the participating county. The State Engineer is not
9 required to include any comment, analysis or other information submitted by a
10 participating county in a monitoring, management and mitigation plan required
11 pursuant to this section.

12 3. A decision by the State Engineer whether or not to include in the plan or to
13 follow any comment, analysis or other information submitted by a participating
14 county pursuant to this section is not subject to judicial review pursuant to NRS
15 533.450.

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

17 533.370 1. Except as otherwise provided in this section and NRS 533.345,
18 533.371, 533.372 and 533.503, the State Engineer shall approve an application
19 submitted in proper form which contemplates the application of water to beneficial
20 use if:

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

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

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

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

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

31 2. Except as otherwise provided in subsection 10 ~~1~~ *and section 3 of this act*,
32 where there is no unappropriated water in the proposed source of supply, or where
33 its proposed use or change conflicts with existing rights or with protectable interests
34 in existing domestic wells as set forth in NRS 533.024, or threatens to prove
35 detrimental to the public interest, the State Engineer shall reject the application and
36 refuse to issue the requested permit. If a previous application for a similar use of
37 water within the same basin has been rejected on those grounds, the new
38 application may be denied without publication.

39 3. In addition to the criteria set forth in subsections 1 and 2 ~~1~~ *and section 3*
40 *of this act*, in determining whether an application for an interbasin transfer of
41 groundwater must be rejected pursuant to this section, the State Engineer shall
42 consider:

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

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

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

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

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

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

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

7 (b) If an application is protested.

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

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

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

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

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

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

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

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

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

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

39 8. If a hearing is held regarding an application, the decision of the State
40 Engineer must be in writing and include findings of fact, conclusions of law and a
41 statement of the underlying facts supporting the findings of fact. The written
42 decision may take the form of a transcription of an oral ruling. The rejection or
43 approval of an application must be endorsed on a copy of the original application,
44 and a record must be made of the endorsement in the records of the State Engineer.
45 The copy of the application so endorsed must be returned to the applicant. Except
46 as otherwise provided in subsection 11, if the application is approved, the applicant
47 may, on receipt thereof, proceed with the construction of the necessary works and
48 take all steps required to apply the water to beneficial use and to perfect the
49 proposed appropriation. If the application is rejected, the applicant may take no
50 steps toward the prosecution of the proposed work or the diversion and use of the
51 public water while the rejection continues in force.

52 9. If a person is the successor in interest of an owner of a water right or an
53 owner of real property upon which a domestic well is located and if the former

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

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

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

15 12. As used in this section ~~+, "domestic"~~;

16 (a) "Domestic well" has the meaning ascribed to it in NRS 534.350.

17 (b) ~~["Environmentally sound" means that the use of groundwater for an~~
 18 ~~interbasin transfer of water will not cause~~

19 ~~(1) An unreasonable effect on natural resources which depend on~~
 20 ~~groundwater in the basin from which the water is transferred, or~~

21 ~~(2) The inability to sustain, over a 75 year planning period, current or~~
 22 ~~successor plant and wildlife communities in the basin from which the water is~~
 23 ~~transferred.~~

24 ~~(c) "Unappropriated water" means the quantity of groundwater that is:~~

25 (1) Available for appropriation based on the perennial yield of the source
 26 of supply ~~++~~ which does not require the actual capture of the recharge or
 27 discharge from the source of supply; and

28 (2) Not committed to existing permitted, certificated, federally reserved,
 29 decreed or vested water rights.

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

31 533.371 The State Engineer shall reject the application and refuse to issue a
 32 permit to appropriate water for a specified period if the State Engineer determines
 33 that:

- 34 1. The application is incomplete;
- 35 2. The prescribed fees have not been paid;
- 36 3. The proposed use is not temporary;
- 37 4. There is no water available from the proposed source of supply without
 38 exceeding the perennial yield ~~for safe yield~~ of that source;

39 5. ~~The~~ Except as otherwise provided in NRS 533.353 and sections 3 to 6,
 40 inclusive, of this act, the proposed use conflicts with existing rights ~~++~~ and the
 41 conflict cannot be eliminated through the use of a monitoring, management and
 42 mitigation plan; or

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

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

45 533.410 ~~++~~ Except as otherwise provided in section 5 of this act, if any
 46 holder of a permit from the State Engineer fails, before the date set for filing in the
 47 permit or the date set by any extension granted by the State Engineer, to file with
 48 the State Engineer proof of application of water to beneficial use, and the
 49 accompanying map, if a map is required, the State Engineer shall advise the holder
 50 of the permit, by registered or certified mail, that the permit is held for cancellation.
 51 If the holder, within 30 days after the mailing of this notice, fails to file with the
 52 State Engineer the required affidavit and map, if a map is required, or an
 53 application for an extension of time to file the instruments, the State Engineer shall

1 cancel the permit. For good cause shown, upon application made before the
2 expiration of the 30-day period, the State Engineer may grant an extension of time
3 in which to file the instruments.

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

5 533.450 1. Except as otherwise provided in NRS 533.353, any person
6 feeling aggrieved by any order or decision of the State Engineer, acting in person or
7 through the assistants of the State Engineer or the water commissioner, affecting
8 the person's interests, when the order or decision relates to the administration of
9 determined rights or is made pursuant to NRS 533.270 to 533.445, inclusive, *and*
10 *sections 3 to 6, inclusive, of this act*, or NRS 533.481, 534.193, 535.200 or
11 536.200, may have the same reviewed by a proceeding for that purpose, insofar as
12 may be in the nature of an appeal, which must be initiated in the proper court of the
13 county in which the matters affected or a portion thereof are situated, but on stream
14 systems where a decree of court has been entered, the action must be initiated in the
15 court that entered the decree. The order or decision of the State Engineer remains in
16 full force and effect unless proceedings to review the same are commenced in the
17 proper court within 30 days after the rendition of the order or decision in question
18 and notice thereof is given to the State Engineer as provided in subsection 3.

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

22 3. No such proceedings may be entertained unless notice thereof, containing a
23 statement of the substance of the order or decision complained of, and of the
24 manner in which the same injuriously affects the petitioner's interests, has been
25 served upon the State Engineer, personally or by registered or certified mail, at the
26 Office of the State Engineer at the State Capital within 30 days following the
27 rendition of the order or decision in question. A similar notice must also be served
28 personally or by registered or certified mail upon the person who may have been
29 affected by the order or decision.

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

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

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

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

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

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

50 6. Except as otherwise provided in this subsection, the petitioner must file a
51 bond in an amount determined by the court, with sureties satisfactory to the court
52 and conditioned in the manner specified by the court. The bond must be filed within
53 5 days after the court determines the amount of the bond pursuant to this

1 subsection. If the petitioner fails to file the bond within that period, the stay is
2 automatically denied. A bond must not be required for a public agency of this State
3 or a political subdivision of this State.

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

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

8 9. Appeals may be taken to the appellate court of competent jurisdiction
9 pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6
10 of the Nevada Constitution from the judgment of the district court in the same
11 manner as in other civil cases.

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

14 11. Whenever it appears to the State Engineer that any litigation, whether now
15 pending or hereafter brought, may adversely affect the rights of the public in water,
16 the State Engineer shall request the Attorney General to appear and protect the
17 interests of the State.

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

19 533.475 The State Engineer and the assistants of the State Engineer shall have
20 power to arrest any person violating any of the provisions of NRS 533.005 to
21 533.470, inclusive, *and sections 3 to 6, inclusive, of this act* and to turn that person
22 over to the sheriff or other competent police officer within the county. Immediately
23 on delivering any such person so arrested into the custody of the sheriff, the State
24 Engineer or assistant making such arrest shall immediately, in writing, and upon
25 oath, make a complaint before the justice of the peace against the person so
26 arrested.

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

28 533.480 Any person violating any of the provisions of NRS 533.005 to
29 533.475, inclusive, *and sections 3 to 6, inclusive, of this act* shall be guilty of a
30 misdemeanor.

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

32 533.515 1. No permit for the appropriation of water or application to change
33 the point of diversion under an existing water right may be denied because of the
34 fact that the point of diversion described in the application for the permit, or any
35 portion of the works in the application described and to be constructed for the
36 purpose of storing, conserving, diverting or distributing the water are situated in
37 any other state; but in all such cases where the place of intended use, or the lands,
38 or part of the lands to be irrigated by means of the water, are situated within this
39 state, the permit must be issued as in other cases, pursuant to the provisions of NRS
40 533.324 to 533.450, inclusive, *and sections 3 to 6, inclusive, of this act*, and
41 chapter 534 of NRS.

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

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

46 533.520 1. Any person who files an application for a permit to appropriate
47 water from above or beneath the surface of the ground for use outside this State, or
48 to change the point of diversion under an existing water right which has a place of
49 use outside of this State, or to change the place of use of water from a location in
50 this State to a location outside this State under an existing right, must file an
51 application with the State Engineer for a permit to do so pursuant to provisions of
52 NRS 533.324 to 533.450, inclusive, *and sections 3 to 6, inclusive, of this act*, and
53 chapter 534 of NRS.

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

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

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

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

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

32 6. Upon submittal of an application under this section, the applicant and, if
33 the applicant is a natural person, the personal representative of the person, are
34 subject to the jurisdiction of the courts of this State and to service of process as
35 provided in NRS 14.065.

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

37 534.090 1. Except as otherwise provided in this section ~~§~~ *and section 5 of*
38 *this act*, failure for 5 successive years after April 15, 1967, on the part of the holder
39 of any right, whether it is an adjudicated right, an unadjudicated right or a right for
40 which a certificate has been issued pursuant to NRS 533.425, and further whether
41 the right is initiated after or before March 25, 1939, to use beneficially all or any
42 part of the underground water for the purpose for which the right is acquired or
43 claimed, works a forfeiture of both undetermined rights and determined rights to
44 the use of that water to the extent of the nonuse. If the records of the State Engineer
45 or any other documents specified by the State Engineer indicate at least 4
46 consecutive years, but less than 5 consecutive years, of nonuse of all or any part of
47 a water right which is governed by this chapter, the State Engineer shall notify the
48 owner of the water right, as determined in the records of the Office of the State
49 Engineer, by registered or certified mail that the owner has 1 year after the date of
50 the notice in which to use the water right beneficially and to provide proof of such
51 use to the State Engineer or apply for relief pursuant to subsection 2 to avoid
52 forfeiting the water right. If, after 1 year after the date of the notice, proof of
53 resumption of beneficial use is not filed in the Office of the State Engineer, the

1 State Engineer shall, unless the State Engineer has granted a request to extend the
2 time necessary to work a forfeiture of the water right, declare the right forfeited
3 within 30 days. Upon the forfeiture of a right to the use of groundwater, the water
4 reverts to the public and is available for further appropriation, subject to existing
5 rights. If, upon notice by registered or certified mail to the owner of record whose
6 right has been declared forfeited, the owner of record fails to appeal the ruling in
7 the manner provided for in NRS 533.450, and within the time provided for therein,
8 the forfeiture becomes final. The failure to receive a notice pursuant to this
9 subsection does not nullify the forfeiture or extend the time necessary to work the
10 forfeiture of a water right.

11 2. The State Engineer may, upon the request of the holder of any right
12 described in subsection 1, extend the time necessary to work a forfeiture under that
13 subsection if the request is made before the expiration of the time necessary to work
14 a forfeiture. The State Engineer may grant, upon request and for good cause shown,
15 any number of extensions, but a single extension must not exceed 1 year. In
16 determining whether to grant or deny a request, the State Engineer shall, among
17 other reasons, consider:

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

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

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

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

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

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

32 The State Engineer shall notify, by registered or certified mail, the owner of the
33 water right, as determined in the records of the Office of the State Engineer, of
34 whether the State Engineer has granted or denied the holder's request for an
35 extension pursuant to this subsection. If the State Engineer grants an extension
36 pursuant to this subsection and, before the expiration of that extension, proof of
37 resumption of beneficial use or another request for an extension is not filed in the
38 Office of the State Engineer, the State Engineer shall declare the water right
39 forfeited within 30 days after the expiration of the extension granted pursuant to
40 this subsection.

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

48 4. A right to use underground water whether it is vested or otherwise may be
49 lost by abandonment. If the State Engineer, in investigating a groundwater source,
50 upon which there has been a prior right, for the purpose of acting upon an
51 application to appropriate water from the same source, is of the belief from his or
52 her examination that an abandonment has taken place, the State Engineer shall so
53 state in the ruling approving the application. If, upon notice by registered or

1 certified mail to the owner of record who had the prior right, the owner of record of
2 the prior right fails to appeal the ruling in the manner provided for in NRS 533.450,
3 and within the time provided for therein, the alleged abandonment declaration as set
4 forth by the State Engineer becomes final.

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

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

9 2. The State Engineer may:

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

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

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

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

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

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

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

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

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

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

41 ↪ the State Engineer shall include as a condition of the permit that pumping water
42 pursuant to the permit may be limited or prohibited to prevent any unreasonable
43 adverse effects on an existing domestic well located within 2,500 feet of the well,
44 unless the holder of the permit and the owner of the domestic well have agreed to
45 alternative measures that mitigate those adverse effects.

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

53 7. The State Engineer:

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

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

8 ↪ The designation of a basin as a critical management area pursuant to this
9 subsection may be appealed pursuant to NRS 533.450. If a basin has been
10 designated as a critical management area for at least 10 consecutive years, the State
11 Engineer shall order that withdrawals, including, without limitation, withdrawals
12 from domestic wells, be restricted in that basin to conform to priority rights, unless
13 a groundwater management plan has been approved for the basin pursuant to NRS
14 534.037.

15 8. In any basin or portion thereof in the State designated by the State
16 Engineer, the State Engineer may restrict drilling of wells in any portion thereof if
17 the State Engineer determines that additional wells would cause an undue
18 interference with existing wells. Any order or decision of the State Engineer so
19 restricting drilling of such wells may be reviewed by the district court of the county
20 pursuant to NRS 533.450.

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

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

24 1. It has examined the past and present practice of the State Engineer with
25 respect to ~~existing water rights and protectable interests in existing domestic wells~~
26 ~~and~~ the approval of an application to appropriate water or to change the point of
27 diversion, manner of use or place of use subject to the development and
28 implementation of a monitoring, management and mitigation plan and finds that the
29 State Engineer has applied the provisions of Nevada law relating to such actions in
30 a manner consistent with the provisions of this act.

31 2. The provisions of this act are intended to clarify rather than change the
32 existing application of chapters 533 and 534 of NRS relating to ~~existing water~~
33 ~~rights and protectable interests in existing domestic wells and~~ the approval of an
34 application to appropriate water or to change the point of diversion, manner of use
35 or place of use subject to the development and implementation of a monitoring,
36 management and mitigation plan, and to promote thereby stability and consistency
37 in the administration of chapters 533 and 534 of NRS.

38 **Sec. 21.** This act becomes effective upon passage and approval and, to the
39 extent that it applies to applications for a permit to appropriate water or to change
40 the point of diversion, manner of use or place of use submitted to the State Engineer
41 on or before the effective date of this act or to existing water rights or protectable
42 interests in an existing domestic well with a priority date on or before the effective
43 date of this act, shall apply to such applications, water rights and protectable
44 interests retroactively and prospectively.