

SUMMARY—Authorizes the creation of water banks. (BDR 48-1091)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: Yes.

AN ACT relating to water; authorizing the creation and setting forth the authority and duties of certain water banks; requiring the State Engineer to submit a biennial report to the Legislature related to water banks; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State Engineer manages the appropriation of water in this State. (Chapters 533 and 534 of NRS) **Sections 2-38** of this bill enact the Nevada Water Banking Act to allow, under certain circumstances, for the creation of a water bank that will be authorized to manage the water that is deposited into the water bank.

Section 2 of this bill provides that **sections 2-38** may be cited as the Nevada Water Banking Act. **Section 3** of this bill declares that the purposes of the Act are to: (1) promote the optimal use of water in this State; (2) promote transparency and provide access to water markets; (3) provide an innovative method of administering water rights and distributing water; (4) support the agricultural economy in this State; (5) facilitate robust and sustainable agricultural production



while meeting the growing demands for municipal and industrial water use; and (6) promote water quality standards and facilitate a healthy and resilient natural environment. **Sections 5-17** of this bill define certain terms relating to water banking.

Section 18 of this bill requires the liberal construction of **sections 2-38**.

Section 19 of this bill clarifies that **sections 2-38** do not prohibit a person from entering into any other legal agreement regarding the use of a perfected water right but that only a water bank may avail itself of the provisions of **sections 2-38**. **Section 19** also prohibits the State Engineer from requiring any person to: (1) create a water bank; (2) deposit a perfected water right into a water bank; or (3) otherwise participate in a water bank.

Section 20 of this bill sets forth the requirements for a person or group of persons to submit an application to the State Engineer to create a statutory water bank.

Section 21 of this bill requires the State Engineer to give certain notice of a completed application to create a statutory water bank.

Section 22 of this bill requires the State Engineer to hold a public meeting to: (1) inform water users of the proposed statutory water bank of the application; and (2) receive comments from water users on the application.

Section 23 of this bill requires, under certain circumstances, the State Engineer to approve the creation of a statutory water bank.

Section 24 of this bill requires the governing body of a statutory water bank to obtain approval from the State Engineer before implementing any change to the information set forth in the approved application to create the statutory water bank.



Section 25 of this bill sets forth various conditions on the operation of the statutory water bank, including that the statutory water bank: (1) is subject to all applicable provisions of **sections 2-38**; (2) may accept deposits of perfected water rights for surface water or groundwater, but not both; and (3) is not required to strictly conform to priority of rights in relation to the delivery of banked water.

Section 26 of this bill sets forth the requirements for a public entity to submit an application to the State Engineer to create a contract water bank.

Section 27 of this bill: (1) requires the State Engineer to give notice of a completed application to create a contract water bank and receive public comment; and (2) authorizes the State Engineer to hold a hearing on the application.

Section 28 of this bill requires, under certain circumstances, the State Engineer to approve the creation of a contract water bank.

Section 29 of this bill requires the public entity to obtain approval from the State Engineer before implementing any change to the information set forth in the approved application to create the contract water bank.

Section 30 of this bill sets forth various conditions on the operation of the contract water bank, including that the contract water bank: (1) is subject to all applicable provisions of **sections 2-38**; (2) may accept deposits of perfected water rights for surface water or groundwater, but not both; and (3) is not required to strictly conform to priority of rights in relation to the delivery of banked water.



Section 31 of this bill authorizes under certain circumstances the owner of a perfected water right to deposit the perfected water right into a water bank, including that the owner and water bank jointly submit a change application to the State Engineer. **Sections 31, 41 and 42** of this bill set forth the requirements for the State Engineer to approve or reject a change application.

Section 32 of this bill sets forth the process for a person to submit a request for and receive banked water from a water bank.

Section 33 of this bill: (1) restricts the receipt of banked water to the service area of the water bank; and (2) requires the use of banked water comply with the conditions, if any, set forth in the approved change application for the banked water right.

Section 34 of this bill requires a water bank to: (1) keep a daily accounting of banked water rights and banked water that is delivered; (2) report any illegal water use to the State Engineer; (3) pay all distribution costs for the delivery of banked water; and (4) maintain an Internet website.

Existing law authorizes, under certain circumstances, the exercise of eminent domain: (1) for the taking of water rights; or (2) to condemn all lands and other property or rights required for the construction, use and maintenance of any works for the lawful diversion, conveyance and storage of waters. (NRS 37.010, 533.050) **Sections 35, 39 and 52** of this bill prohibit the use of such power while the person uses banked water relating to a perfected water right and within 5 years after the date on which such use ceases.



Section 36 of this bill requires each water bank to submit an annual report to the State Engineer. **Section 37** of this bill requires the State Engineer to give written notice to a water bank that does not submit an annual report.

Section 38 of this bill requires the State Engineer to submit a biennial report to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature.

Section 55 of this bill expires the provisions of this bill on December 31, 2031. **Section 54** of this bill: (1) prohibits a water bank from receiving any deposit or approving any delivery request of banked water after December 31, 2031; and (2) provides that a banked water right that is currently deposited into the water bank on December 31, 2031, reverts back to the owner.

Sections 25, 30, 31, 40, 43-46 and 51 of this bill exclude perfected water rights that have been deposited into a water bank from provisions of law related to abandonment, forfeiture and cancellation.

Section 47 of this bill sets forth the fees for an application to create a water bank.

Section 48 of this bill authorizes, with limited exception, a person who is aggrieved by an order of decision of the State Engineer related to water banks to obtain judicial review.

Sections 49 of this bill provides that any person violating **sections 2-38** is subject to certain criminal penalties.



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

Section 1. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 38, inclusive, of this act.

Sec. 2. *Sections 2 to 38, inclusive, of this act may be cited as the Nevada Water Banking Act.*

Sec. 3. *The Legislature hereby finds and declares that the intent and purposes of the Nevada Water Banking Act are to:*

- 1. Promote the optimal use of water in this State;*
- 2. Promote transparency and provide access to water markets;*
- 3. Provide an innovate method of administering water rights and distributing water in this State that encourages temporary, flexible and low-cost water transactions between water users;*
- 4. Support the agricultural economy in this State by providing access to water resources and income for the agricultural industry;*
- 5. Facilitate robust and sustainable agricultural production while meeting the growing demands for municipal and industrial water use in this State; and*
- 6. Promote water quality standards and facilitate a healthy and resilient natural environment.*



Sec. 4. *As used in sections 2 to 38, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5 to 17, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 5. *“Approved change application” means a change application approved by the State Engineer pursuant to NRS 533.370 that authorizes the holder of a perfected water right to deposit that right into a water bank pursuant to the provisions of the Nevada Water Banking Act.*

Sec. 6. *“Banked water” means water from a banked water right that has been deposited into a water bank and may be distributed by the water bank pursuant to a delivery request.*

Sec. 7. *“Banked water right” means a perfected water right, or portion thereof, that has been deposited into a water bank pursuant to the provisions of the Nevada Water Banking Act.*

Sec. 8. *“Borrower” means a person who is approved by a water bank to receive a delivery of banked water.*

Sec. 9. *“Contract water bank” means a water bank created pursuant to section 28 this act.*

Sec. 10. *“Delivery request” means a request to receive an allocation of banked water from a water bank.*

Sec. 11. *“Deposit” means the temporary placement of a perfected water right or portion thereof into a water bank for the purpose of allowing the banked water to be used by a borrower within the service area of the water bank.*



Sec. 12. *“Original use” means the conditions of use for a banked water right that were in effect before the banked water right was deposited into a water bank.*

Sec. 13. *“Perfected water right” means a water right that lists irrigation as the manner of use and has been finalized through the issuance of:*

- 1. A certificate of appropriation; or*
- 2. A court decree.*

Sec. 14. *“Public entity” means the State of Nevada or any agency or political subdivision of the State. The term includes, without limitation, any purveyor of water but does not include the United States or an agency of the United States.*

Sec. 15. *“Service area” means the geographic area where a water bank is approved by the State Engineer to operate and make deliveries of banked water.*

Sec. 16. *“Statutory water bank” means a water bank created pursuant to section 23 of this act.*

Sec. 17. *“Water bank” means a contract water bank or a statutory water bank that is created and operates pursuant to the provisions of the Nevada Water Banking Act.*

Sec. 18. *The provisions of sections 2 to 38, inclusive, of this act must be liberally construed to carry out the legislative intent and purposes set forth in section 3 of this act.*

Sec. 19. *1. The Nevada Water Banking Act does not prohibit a person from entering into any other legal agreement regarding the use of a perfected water right that differs from the requirements of sections 2 to 38, inclusive, of this act, except that only a water bank*



created pursuant to the provisions of the Act may avail itself of the provisions of sections 2 to 38, inclusive, of this act.

2. The State Engineer shall not require any person to:

(a) Create a water bank; or

(b) Deposit any perfected water right into a water bank or otherwise participate in a water bank.

Sec. 20. 1. Except as otherwise provided in this section, a person or group of persons who own one or more perfected water rights may submit to the State Engineer an application to create a statutory water bank. The application must be on a form prescribed by the State Engineer and include, without limitation:

(a) The name and mailing address of the proposed statutory water bank.

(b) The legal structure of the proposed statutory water bank, which must be recognized under the laws of this State.

(c) A map of the intended service area for the proposed statutory water bank.

(d) A statement of whether the proposed statutory water bank will accept deposits of perfected water rights for surface water or groundwater.

(e) A copy of the governing documents for the proposed statutory water bank that set forth:

(1) The number of members that will serve on the governing body of the statutory water bank. The governing body must have at least three members and the total number of members must be an odd number.



(2) The terms of office, procedures for election or appointment and the qualifications for and duties of the members of the governing body.

(3) The names, telephone numbers and mailing addresses of the persons who will be the initial members of the governing body if the State Engineer approves the creation of the statutory water bank.

(f) Procedures that describe how, if approved, the proposed statutory water bank will:

(1) Calculate and fund the administrative costs for the operation of the statutory water bank.

(2) Design, facilitate and conduct transactions between borrowers and depositors for the use of banked water.

(3) Accept, reject and manage banked water rights, including, without limitation:

(I) The information that a depositor is required to provide to demonstrate the feasibility of using his or her perfected water right within the service area of the statutory water bank.

(II) A description of the process for a depositor to work with the statutory water bank in order to file a change application with the State Engineer for the deposit of a perfected water right into the statutory water bank.

(III) The conditions for depositing a perfected water right into the statutory water bank.



(IV) A description of how the statutory water bank will determine prices for the use of banked water and make payments to a depositor for the use of his or her perfected water rights.

(V) The conditions, if any, under which a depositor may continue to use his or her perfected water right at the original place of use, which must be consistent with the requirements of subsection 3 of section 31 of this act.

(4) Accept, review and approve delivery requests for banked water, including, without limitation:

(I) The process and deadline for submitting a delivery request to the statutory water bank.

(II) Any costs or fees associated with submitting a delivery request and how those costs and fees will be applied or used by the statutory water bank.

(III) The information that a borrower must include in a delivery request in order to sufficiently demonstrate the feasibility of receiving the requested water within the service area of the statutory water bank.

(IV) Procedures for providing notice to other water users in the service area of the statutory water bank and receiving comments on delivery requests and the approval or denial, thereof.

(V) The appeal or grievance procedures for a borrower seeking to challenge the denial of a delivery request, including, without limitation, setting forth which party has the burden in an appeal and the standard of review.



(VI) A description of how the statutory water bank will coordinate with the State Engineer to facilitate the distribution of approved delivery requests.

(5) Ensure that the aggregate amount of banked water that is delivered to borrowers by the statutory water bank during any calendar year does not exceed the total amount of banked water that has been deposited into the statutory water bank.

(6) Resolve any complaint regarding the operations of the statutory water bank.

(g) The process for dissolving or terminating the operation of the proposed statutory water bank, including, without limitation, how the statutory water bank will return banked water rights to depositors and how the statutory water bank will make any payments that are owed to depositors at the time of dissolution or termination.

(h) The application fee set forth in NRS 533.435.

2. An application submitted pursuant to subsection 1 must be signed by the applicant and at least two persons who will be the initial members of the governing body of the proposed statutory water bank if the application is approved, affirming, under penalty of perjury, that:

(a) The information contained in the application is true and correct;

(b) If approved, the statutory water bank:

(1) Will not discriminate between depositors, borrowers or the manner of use for any banked water right.

(2) Will comply with any condition set forth by the State Engineer in an approved change application for a banked water right; and



(3) Will report to the State Engineer any known violations of approved change applications for banked water rights.

3. The place of use and point of diversion for the perfected water rights owned by a person or group of persons who submit an application for the creation of a statutory water bank pursuant to this section must be located within the proposed service area of the statutory water bank.

4. The United States or an agency of the United States may not apply for the creation of a statutory water bank pursuant to this section.

Sec. 21. *1. Upon receipt of an application to create a statutory water bank, the State Engineer shall:*

(a) Record the date on which the application was received; and

(b) Determine if the application meets the requirements set forth in section 20 of this act. If the application is incomplete, the State Engineer must notify the applicant of any additional information or changes that are needed to process the application.

2. Within 30 days after the date on which the State Engineer determines that an application to create a statutory water bank is complete, the State Engineer shall post a notice of the application on the Internet website of the State Engineer and publish or cause to be published a notice of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the service area of the proposed statutory water bank will be located. The notice must set forth:



(a) That an application to create a statutory water bank has been filed with the State Engineer;

(b) Where any person may obtain a copy of the application and any additional information related to the application; and

(c) The date, time and location of the public meeting required pursuant to section 22 of this act.

Sec. 22. 1. On the date indicated in the notice posted pursuant to section 21 of this act, the State Engineer shall hold a public meeting to:

(a) Inform water users within the proposed service area of the application to create the statutory water bank; and

(b) Receive comments from water users on the application.

2. After the public meeting, the State Engineer shall accept public comments for a period of not less than 30 days. A person who submits a public comment pursuant to this section is not entitled to appeal the decision of the State Engineer whether to create the statutory water bank pursuant to NRS 533.450.

3. The State Engineer shall review any public comments when considering whether to approve an application to create a statutory water bank, but is not required to address how or whether any public comments impacted his or her decision.

4. The applicant may:



(a) Review any public comments and comments of the State Engineer related to the application before the State Engineer makes a decision whether to approve the creation of the statutory water bank; and

(b) Amend the application before the State Engineer makes a decision by notifying the State Engineer in writing that the applicant will be submitting a revised application. Any revised application is subject to the same requirements as the original application.

Sec. 23. 1. After the hearing and public comment period, if the State Engineer determines the information in the application is satisfactory and consistent with the intent and purposes set forth in section 3 of this act, the State Engineer must approve the creation of the statutory water bank.

2. In approving the application, the State Engineer shall:

(a) Issue an order approving the creation of the statutory water bank; and

(b) Publish the order and approved application on the Internet website of the Office of the State Engineer.

3. If the State Engineer does not approve the application for the creation of a statutory water bank, the State Engineer must:

(a) Issue a written explanation to the applicant setting forth the reason or reasons for the denial; and

(b) Publish the written explanation on the Internet website of the Office of the State Engineer.



Sec. 24. If the State Engineer approves the creation of a statutory water bank pursuant to section 23 of this act, the governing body of the statutory water bank must obtain approval from the State Engineer before implementing any change to the information set forth in the approved application. The governing body must file with the State Engineer a revised application on a form provided by the State Engineer for approval of any such change.

Sec. 25. 1. A statutory water bank:

(a) Is subject to all applicable provisions of the Nevada Water Banking Act as a condition of the State Engineer's approval to create the statutory water bank.

(b) Except as otherwise provided in this paragraph, may accept deposits of perfected water rights. A statutory water bank may accept perfected water rights for surface water or groundwater, but not both.

(c) May deliver banked water that has been deposited into the statutory water bank in any way that is authorized pursuant to the Act but is not required to strictly conform to priority of rights in relation to banked water.

(d) May not discriminate between depositors, borrowers or the manner of use for water that is distributed from a banked water right.

2. A banked water right deposited into a statutory water bank is not subject to cancellation pursuant to NRS 533.390 or 533.410 or to abandonment or forfeiture pursuant to NRS 533.060 or 534.090.



Sec. 26. 1. *A public entity may submit to the State Engineer an application to create a contract water bank. The application must be on a form prescribed by the State Engineer and include, without limitation:*

(a) The name and mailing address of the proposed contract water bank.

(b) A map of the intended service area of the proposed contract water bank, which must be within the jurisdiction of the public entity.

(c) A statement of whether the proposed contract water bank will accept deposits of perfected water rights for surface water or groundwater.

(d) A copy of the contract between the public entity and the person or persons to whom the proposed contract water bank will supply water if the application to create the contract water bank is approved. The contract may be redacted as necessary to exclude any information that is proprietary, protected or confidential.

(e) A description of how the governing body of the proposed contract water bank will be structured and operate.

(f) An explanation of how delivery requests and banked water rights will be administered.

(g) An explanation of the procedures that describe how, if approved, the proposed contract water bank will ensure that the aggregate amount of banked water that is delivered to users during any calendar year does not exceed the total amount of banked water that has been deposited into the contract water bank.

(h) Criteria, if any, for the participation in the proposed contract water bank of a person that is not a public entity.



(i) A description of how the public entity will notify the public of the activities of the proposed contract water bank.

(j) The process for dissolving or terminating the operation of the proposed contract water bank, including, without limitation, how the contract water bank will return banked water rights to depositors and how the contract water bank will make any payments owed to depositors.

(k) The application fee set forth in NRS 533.435.

2. An application for the creation of a contract water bank must be signed, under penalty of perjury, attesting that:

(a) The information contained in the application is true and correct;

(b) If approved, the contract water bank:

(1) Will comply with any condition set forth by the State Engineer in an approved change application for a banked water right; and

(2) Will report to the State Engineer any known violation of an approved change application for a banked water right.

3. The public entity must post any application for the creation of a contract water bank that is submitted to the State Engineer on the Internet website of the public entity.

Sec. 27. 1. Upon receipt of an application to create a contract water bank, the State Engineer shall:

(a) Record the date on which the application was received; and



(b) Determine if the application meets the requirements of section 26 of this act. If the application is incomplete, the State Engineer must notify the public entity of any additional information or changes that are needed to process the application.

2. Within 30 days after the date on which the State Engineer determines that an application is complete, the State Engineer shall post a notice of the application on the Internet website of the State Engineer and publish or cause to be published a notice of the application once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the service area of the proposed contract water bank is located. The notice must set forth:

(a) That an application to create a contract water bank has been filed with the State Engineer; and

(b) Where any person may obtain a copy of the application and any additional information related to the application.

3. The State Engineer may hold a public meeting to:

(a) Inform water users within the service area of the proposed contract water bank; and

(b) Receive comments from water users regarding the application.

4. The State Engineer may accept public comments on the application. A person who submits a public comment on an application is not entitled to appeal the decision of the State Engineer whether to create the contract water bank pursuant to NRS 533.450.

5. The State Engineer is not required to address how or whether any public comment impacted his or her decision.



6. *The public entity may:*

(a) *Review any public comment and comments of the State Engineer related to the application before the State Engineer makes a decision whether to approve the creation of the contract water bank; and*

(b) *Amend the application before the State Engineer makes a decision by notifying the State Engineer in writing that the public entity will be submitting a revised application. Any revised application is subject to the requirements set forth in section 26 of this act.*

Sec. 28. 1. *If the State Engineer determines that the information in the application is satisfactory and is consistent with the intent and purposes set forth in section 3 of this act, the State Engineer must approve the creation of the contract water bank.*

2. *In approving the application, the State Engineer shall:*

(a) *Issue an order approving the creation of the contract water bank; and*

(b) *Publish the order and approved application on the Internet website of the State Engineer.*

3. *If the State Engineer does not approve an application for the creation of a contract water bank, the State Engineer must:*

(a) *Issue a written explanation to the public entity setting forth the reasons for the denial; and*

(b) *Publish the written explanation on the Internet website of the Office of the State Engineer.*



Sec. 29. *If the State Engineer approves the creation of a contract water bank pursuant to section 28 of this act, the public entity must obtain approval from the State Engineer before implementing any change to the information set forth in the approved application. The public entity must file with the State Engineer a revised application on a form provided by the State Engineer for approval of any such change.*

Sec. 30. 1. *A contract water bank:*

(a) Is subject to all applicable provisions of the Nevada Water Banking Act as a condition of the State Engineer's approval to create the contract water bank.

(b) Except as otherwise provided in this paragraph, may accept deposits of perfected water rights. A contract water bank may accept deposits of perfected water rights for surface water or groundwater, but not both.

(c) May deliver banked water that has been deposited into the contract water bank in any way that is authorized pursuant to the Act but is not required to strictly conform to priority of rights in relation to banked water.

2. *A banked water right deposited into a contract water bank is not subject to cancellation pursuant to NRS 533.390 or 533.410 or to abandonment or forfeiture pursuant to NRS 533.060 or 534.090.*

Sec. 31. 1. *The owner of a perfected water right may apply to deposit the perfected water right into a water bank by jointly submitting a change application with the water bank to the State Engineer for approval pursuant to NRS 533.370. If the change application is approved by the State Engineer, the perfected water right is deposited into the water bank.*



2. The State Engineer shall not approve a change application for the deposit of a perfected water right into the water bank if the change application does not meet the requirements set forth in NRS 533.370 or the deposit of the perfected water right into the water bank is not consistent with the provisions set forth in the application to create the water bank that was approved by the State Engineer pursuant to the Nevada Water Banking Act. If the State Engineer approves a change application, the permit expires automatically upon the date of the dissolution of the water bank or on December 31, 2031, whichever occurs first.

3. If a perfected water right is deposited into a water bank:

(a) The depositor's permit related to the perfected water right is not subject to cancellation pursuant to NRS 533.390 or 533.410.

(b) The depositor may continue to use such water for its original use if:

(1) The depositor does so under the authority, control and accounting of the water bank;

(2) The depositor's original use is consistent with the operating procedures of the water bank; and

(3) The water bank does not allow the banked water to be delivered to any other borrower within the service area of the water bank.

4. A depositor retains title to any perfected water right that is deposited into a water bank and the water bank or borrowers have no claim of ownership.

Sec. 32. 1. To receive banked water from a water bank, a borrower must submit a delivery request to the water bank that complies with the provisions related to such a request



that were set forth in the application to create the water bank that was approved by the State Engineer pursuant to the Nevada Water Banking Act.

2. Before any water bank may grant a delivery request, the water bank must apply for and obtain a permit to change the point of diversion, manner of use or place of use of water already appropriated pursuant to NRS 533.370. If the State Engineer grants such a permit, the permit expires automatically upon the date of the dissolution of the water bank or on December 31, 2031, whichever occurs first.

3. If a delivery request would result in:

(a) The transfer of water to and beneficial use of water in a county in this State other than the county in which the water is appropriated or in another state, the water bank must comply with all other relevant provisions of law related to the transfer including, without limitation, NRS 533.438 and 533.4385.

(b) An interbasin transfer of groundwater, the provisions of this chapter related to an interbasin transfer of groundwater apply.

Sec. 33. 1. *A borrower may only receive banked water from a water bank within the service area of the water bank. The use of banked water must comply with the conditions, if any, set forth in the approved change application for the banked water right.*

2. The State Engineer shall administratively supervise the delivery of banked water to a borrower. The State Engineer:



(a) May review an approved delivery request to ensure the delivery request complies with an order by the State Engineer approving water rights for use in the water bank, or established distribution procedures; and

(b) Must restrict delivery of banked water that would conflict with existing rights or with protectable interests in existing domestic wells of persons who are not members of the water bank.

Sec. 34. *A water bank shall:*

1. Keep a daily accounting of banked water rights and banked water that is delivered to borrowers;

2. Report any illegal water use to the State Engineer;

3. Pay all distribution costs assessed for the delivery of banked water; and

4. Maintain an Internet website.

Sec. 35. *No person may exercise the right of eminent domain pursuant to chapter 37 of NRS or NRS 533.050 in relation to a perfected water right while the person uses banked water from the perfected water right and within 5 years after the date on which such use ceases.*

Sec. 36. *1. On or before January 31 of each year, each water bank shall submit to the State Engineer, on a form provided by the State Engineer, an annual report on the management and operations of the water bank which must include, without limitation, the following information for the previous calendar year:*

(a) The number of perfected water rights and volume of banked water that were deposited into the water bank;



(b) The change application number for each perfected water right deposited into the water bank;

(c) The number of banked water rights that were loaned to borrowers and the volume of banked water that was delivered by the water bank;

(d) The nature of use of all banked water that was delivered by the water bank;

(e) The name of every borrower of banked water;

(f) The amount that the water bank charged each borrower of banked water and the amount the water bank paid to the depositor of that banked water;

(g) The revenue generated by the water bank, including, without limitation, an explanation of the sources of revenue;

(h) The total expenses related to the operation of the water bank;

(i) The accounting practices used by the water bank;

(j) An explanation of all pending or ongoing litigation involving the water bank;

(k) If any audit of the water bank was performed, a summary of the audit report and findings;

(l) If the water bank submitted a revised application to change the information that was included in the original application for the creation of the water bank that was approved by the State Engineer, an explanation of each proposed change;

(m) A narrative explanation of any inconsistencies in the annual report or in the operation of the water bank; and



(n) A narrative explanation of how the statutory water bank is or is not fulfilling the intent and purposes set forth in section 3 of this act.

2. The report required pursuant to subsection 1 must be signed under penalty of perjury by at least two members of the governing body of the water bank attesting that the information contained in the report is truthful and accurate.

3. If the annual report does not meet the requirements set forth in subsections 1 and 2, the State Engineer must immediately notify the governing body of the water bank in writing and provide a written explanation of the information that needs to be submitted or corrected. The water bank shall correct all deficiencies in the annual report within 90 days after the date such notice is sent by the State Engineer.

4. The State Engineer shall consider satisfactory evidence that the water bank has mailed, hand-delivered or sent the annual report electronically as proof of compliance with this section.

5. Every annual report must be posted:

(a) On the Internet website of the Office of the State Engineer; and

(b) On the Internet website of the water bank.

Sec. 37. 1. If a water bank does not submit an annual report that satisfies the requirements set forth in section 36 of this act, the State Engineer must provide to the water bank a written notice of noncompliance that:

(a) Explains why the water bank is noncompliant; and



(b) Gives the water bank 90 days from the date of the notice to correct the cause of the noncompliance.

2. The State Engineer shall post the notice of noncompliance on the Internet website of the Office of the State Engineer.

3. If the State Engineer determines that the water bank has corrected the noncompliance within the 90-day period, the State Engineer must:

(a) Provide the water bank with written notice that the water bank's noncompliance has been cured; and

(b) Post on the Internet website of the Office of the State Engineer notice that the water bank's noncompliance has been cured.

4. If the water bank fails to correct the noncompliance within the 90-day period, the State Engineer shall terminate the approval for the water bank to operate. If the State Engineer terminates approval for the water bank to operate:

(a) The termination is effective on December 31 of the current calendar year;

(b) The State Engineer shall:

(1) Mail written notice to the water bank that the water bank's approval to operate has been terminated and that the operations of the water bank must cease by December 31 of the current calendar year; and

(2) Post on the Internet website of the Office of the State Engineer notice that the water bank's approval to operate has been terminated; and

(c) The water bank shall:



(1) Notify depositors and borrowers of the termination not later than 60 days after the date the notice of the termination is mailed pursuant to this subsection; and

(2) Enact the procedures set forth in the water bank application to terminate the operations of the water bank.

Sec. 38. *The State Engineer shall on or before December 31 of each even-numbered year submit to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature a written report regarding the implementation of sections 2 to 38, inclusive, of this act. The report must include, without limitation:*

1. A summary of the implementation of the Nevada Water Banking Act;
2. The recommendation of the State Engineer as to whether the Legislature should take one or more of the following actions:

(a) Remove or extend the expiration date of the Nevada Water Banking Act;

(b) Amend the Nevada Water Banking Act;

(c) Take no action in relation to the Nevada Water Banking Act; or

(d) Allow the Nevada Water Banking Act to expire;

3. An explanation of any recommendation made pursuant to subsection 2; and

4. Arguments for and against any recommendation made pursuant to subsection 2.

Sec. 39. NRS 533.050 is hereby amended to read as follows:

533.050 The beneficial use of water is hereby declared a public use, and *except as otherwise provided in section 35 of this act*, any person may exercise the right of eminent



domain to condemn all lands and other property or rights required for the construction, use and maintenance of any works for the lawful diversion, conveyance and storage of waters.

Sec. 40. NRS 533.060 is hereby amended to read as follows:

533.060 1. Rights to the use of water must be limited and restricted to as much as may be necessary, when reasonably and economically used for irrigation and other beneficial purposes, irrespective of the carrying capacity of the ditch. The balance of the water not so appropriated must be allowed to flow in the natural stream from which the ditch draws its supply of water, and must not be considered as having been appropriated thereby.

2. Rights to the use of surface water shall not be deemed to be lost or otherwise forfeited for the failure to use the water therefrom for a beneficial purpose.

3. A surface water right that is appurtenant to land formerly used primarily for agricultural purposes is not subject to a determination of abandonment if the surface water right:

(a) Is appurtenant to land that has been converted to urban use; or

(b) Has been dedicated to or acquired by a water purveyor, public utility or public body for municipal use.

4. *A surface water right that has been deposited into a water bank pursuant to the Nevada Water Banking Act is not subject to a determination of abandonment.*

5. In a determination of whether a right to use surface water has been abandoned, a presumption that the right to use the surface water has not been abandoned is created upon the submission of records, photographs, receipts, contracts, affidavits or any other proof of the



occurrence of any of the following events or actions within a 10-year period immediately preceding any claim that the right to use the water has been abandoned:

- (a) The delivery of water;
- (b) The payment of any costs of maintenance and other operational costs incurred in delivering the water;
- (c) The payment of any costs for capital improvements, including works of diversion and irrigation; or
- (d) The actual performance of maintenance related to the delivery of the water.

~~5.1~~ **6.** A prescriptive right to the use of the water or any of the public water appropriated or unappropriated may not be acquired by adverse possession. Any such right to appropriate any of the water must be initiated by applying to the State Engineer for a permit to appropriate the water as provided in this chapter.

~~6.1~~ **7.** The State of Nevada reserves for its own present and future use all rights to the use and diversion of water acquired pursuant to chapter 462, Statutes of Nevada 1963, or otherwise existing within the watersheds of Marlette Lake, Franktown Creek and Hobart Creek and not lawfully appropriated on April 26, 1963, by any person other than the Marlette Lake Company. Such a right must not be appropriated by any person without the express consent of the Legislature.

Sec. 41. NRS 533.370 is hereby amended to read as follows:

533.370 1. Except as otherwise provided in this section and NRS 533.0241, 533.345, 533.371, 533.372 and 533.503, *and section 31 of this act*, the State Engineer shall approve an



application submitted in proper form which contemplates the application of water to beneficial use *or the depositing of a perfected water right into a water bank pursuant to the Nevada Water Banking Act* if:

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

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

(c) The applicant provides proof satisfactory to the State Engineer ~~(1)~~:

(1) Of the applicant's:

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

~~(2)~~ *(II)* Financial ability and reasonable expectation actually to construct the work and apply the water to the intended beneficial use with reasonable diligence ~~(1)~~; *or*

(2) If the applicant is proposing to deposit a perfected water right into a water bank pursuant to the Nevada Water Banking Act, that the deposit is consistent with the requirements of section 31 of this act.

2. Except as otherwise provided in subsection 10, where there is no unappropriated water in the proposed source of supply, where the groundwater that has not been committed for use has been reserved pursuant to NRS 533.0241 or where its proposed use or change conflicts with existing rights or with protectable interests in existing domestic wells as set forth in NRS 533.024, or threatens to prove detrimental to the public interest, the State Engineer shall reject



the application and refuse to issue the requested permit. If a previous application for a similar use of water within the same basin has been rejected on those grounds, the new application may be denied without publication.

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

- (a) Whether the applicant has justified the need to import the water from another basin;
- (b) If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;
- (c) Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;
- (d) Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and
- (e) Any other factor the State Engineer determines to be relevant.

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

- (a) Upon written authorization to do so by the applicant.
- (b) If an application is protested.
- (c) If the purpose for which the application was made is municipal use.



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

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

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

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

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

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

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

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



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

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

9. If a person is the successor in interest of an owner of a water right or an owner of real property upon which a domestic well is located and if the former owner of the water right or real property on which a domestic well is located had previously filed a written protest against the granting of an application, the successor in interest must be allowed to pursue that protest in the



same manner as if the successor in interest were the former owner whose interest he or she succeeded. If the successor in interest wishes to pursue the protest, the successor in interest must notify the State Engineer in a timely manner on a form provided by the State Engineer.

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

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

12. As used in this section, “domestic well” has the meaning ascribed to it in NRS 534.350.

Sec. 42. NRS 533.371 is hereby amended to read as follows:

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

1. The application is incomplete;
2. The prescribed fees have not been paid;
3. The proposed use is not temporary;
4. There is no water available from the proposed source of supply without exceeding the perennial yield or safe yield of that source;
5. The groundwater that has not been committed for use from the proposed source of supply has been reserved pursuant to NRS 533.0241;
6. The proposed use conflicts with existing rights; ~~for~~



7. The proposed use threatens to prove detrimental to the public interest ~~§~~; or

8. *The application does not meet the requirements set forth in section 31 of this act, if applicable.*

Sec. 43. NRS 533.380 is hereby amended to read as follows:

533.380 1. Except as otherwise provided in subsection 5 ~~§~~ and section 31 of this act, in an endorsement of approval upon any application, the State Engineer shall:

(a) Set a time before which the construction of the work must be completed, which must be within 5 years after the date of approval.

(b) Except as otherwise provided in this paragraph, set a time before which the complete application of water to a beneficial use must be made, which must not exceed 10 years after the date of the approval. The time set under this paragraph respecting an application for a permit to apply water to a municipal or quasi-municipal use on any land:

(1) For which a final subdivision map has been recorded pursuant to chapter 278 of NRS;

(2) For which a plan for the development of a project has been approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(3) On any land for which a plan for the development of a planned unit development has been recorded pursuant to chapter 278A of NRS,

↪ must not be less than 5 years.

2. The State Engineer may limit the applicant to a smaller quantity of water, to a shorter time for the completion of work, and, except as otherwise provided in paragraph (b) of subsection 1, to a shorter time for the perfecting of the application than named in the application.



3. Except as otherwise provided in subsection 4 and NRS 533.395 and 533.4377, the State Engineer may, for good cause shown, grant any number of extensions of time within which construction work must be completed, or water must be applied to a beneficial use under any permit therefor issued by the State Engineer, but a single extension of time must not exceed 5 years. An application for the extension must in all cases be:

(a) Made within 30 days following notice by registered or certified mail that proof of the work is due as provided for in NRS 533.390 and 533.410; and

(b) Accompanied by proof and evidence of the good faith and reasonable diligence with which the applicant is pursuing the perfection of the application.

↪ The State Engineer shall not grant an extension of time unless the State Engineer determines from the proof and evidence so submitted that the applicant is proceeding in good faith and with reasonable diligence to perfect the application. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence that the holder is not proceeding in good faith and with reasonable diligence to perfect the application.

4. Except as otherwise provided in subsection 5 and NRS 533.395, whenever the holder of a permit issued for any municipal or quasi-municipal use of water on any land referred to in paragraph (b) of subsection 1, or for any use which may be served by a county, city, town, public water district or public water company, requests an extension of time to apply the water to a beneficial use, the State Engineer shall, in determining whether to grant or deny the extension, consider, among other factors:



(a) Whether the holder has shown good cause for not having made a complete application of the water to a beneficial use;

(b) The number of parcels and commercial or residential units which are contained in or planned for the land being developed or the area being served by the county, city, town, public water district or public water company;

(c) Any economic conditions which affect the ability of the holder to make a complete application of the water to a beneficial use;

(d) Any delays in the development of the land or the area being served by the county, city, town, public water district or public water company which were caused by unanticipated natural conditions; and

(e) The period contemplated in the:

(1) Plan for the development of a project approved by the local government pursuant to NRS 278.010 to 278.460, inclusive; or

(2) Plan for the development of a planned unit development recorded pursuant to chapter 278A of NRS,

↪ if any, for completing the development of the land.

5. The provisions of subsections 1 and 4 do not apply to an environmental permit or a temporary permit issued pursuant to NRS 533.436 or 533.504.

6. For the purposes of this section, the measure of reasonable diligence is the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is composed of



several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.

7. The State Engineer shall:

(a) Adopt any regulation necessary to carry out the provisions of this section; and

(b) Provide a copy of such regulations to any person upon request.

Sec. 44. NRS 533.390 is hereby amended to read as follows:

533.390 1. ~~Any~~ *Except as otherwise provided in section 31 of this act, any* person holding a permit from the State Engineer shall, on or before the date set for the completion of the work, file in detail a description of the work as actually constructed. This statement must be verified by the affidavit of the applicant or the applicant's agent or attorney.

2. Should any person holding a permit from the State Engineer fail to file with the State Engineer the proof of completion of work, as provided in this chapter, the State Engineer shall advise the holder of the permit, by registered or certified mail, that it is held for cancellation, and should the holder, within 30 days after the mailing of such advice, fail to file the required affidavit, the State Engineer shall cancel the permit. For good cause shown, upon application made prior to the expiration of the 30-day period, the State Engineer may, in his or her discretion, grant an extension of time in which to file the instruments.

Sec. 45. NRS 533.395 is hereby amended to read as follows:

533.395 1. ~~He~~ *Except as otherwise provided in section 31 of this act, if,* at any time in the judgment of the State Engineer, the holder of any permit to appropriate the public water is



not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall require the submission of such proof and evidence as may be necessary to show a compliance with the law. If, in the judgment of the State Engineer, the holder of a permit is not proceeding in good faith and with reasonable diligence to perfect the appropriation, the State Engineer shall cancel the permit, and advise the holder of its cancellation. The failure to provide the proof and evidence required pursuant to this subsection is prima facie evidence that the holder is not proceeding in good faith and with reasonable diligence to perfect the appropriation.

2. If any permit is cancelled under the provisions of this section or NRS 533.390 or 533.410, the holder of the permit may within 60 days of the cancellation of the permit file a written petition with the State Engineer requesting a review of the cancellation by the State Engineer at a public hearing. The State Engineer may, after receiving and considering evidence, affirm, modify or rescind the cancellation.

3. If the decision of the State Engineer modifies or rescinds the cancellation of a permit, the effective date of the appropriation under the permit is vacated and replaced by the date of the filing of the written petition with the State Engineer.

4. The cancellation of a permit may not be reviewed or be the subject of any judicial proceedings unless a written petition for review has been filed and the cancellation has been affirmed, modified or rescinded pursuant to subsection 2.

5. For the purposes of this section, the measure of reasonable diligence is the steady application of effort to perfect the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. When a project or integrated system is comprised of



several features, work on one feature of the project or system may be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system.

6. The appropriation of water or the acquisition or lease of appropriated water from any:

(a) Stream system as provided for in this chapter; or

(b) Underground water as provided for in NRS 534.080,

↳ by a political subdivision of this State or a public utility, as defined in NRS 704.020, to serve the present or the reasonably anticipated future municipal, industrial or domestic needs of its customers for water, as determined in accordance with a master plan adopted pursuant to chapter 278 of NRS or a plan approved by the State Engineer, must be considered when reviewing an extension of time.

Sec. 46. NRS 533.410 is hereby amended to read as follows:

533.410 ~~HH~~ *Except as otherwise provided in section 31 of this act, if*, any holder of a permit from the State Engineer fails, before the date set for filing in the permit or the date set by any extension granted by the State Engineer, to file with the State Engineer proof of application of water to beneficial use, and the accompanying map, if a map is required, the State Engineer shall advise the holder of the permit, by registered or certified mail, that the permit is held for cancellation. If the holder, within 30 days after the mailing of this notice, fails to file with the State Engineer the required affidavit and map, if a map is required, or an application for an extension of time to file the instruments, the State Engineer shall cancel the permit. For good



cause shown, upon application made before the expiration of the 30-day period, the State Engineer may grant an extension of time in which to file the instruments.

Sec. 47. NRS 533.435 is hereby amended to read as follows:

533.435 1. The State Engineer shall collect the following fees:

For examining and filing an application for a permit to appropriate water\$360.00

This fee includes the cost of publication, which is \$50.

For reviewing a corrected application or map, or both, in connection with an application for a water right permit100.00

For examining and acting upon plans and specifications for construction of a dam1,200.00

For examining and filing an application for each permit to change the point of diversion, manner of use or place of use of an existing right.....240.00

This fee includes the cost of publication, which is \$50.

For examining and filing an application for a temporary permit to change the point of diversion, manner of use or place of use of an existing right180.00

For issuing and recording each permit to appropriate water for any purpose, except for generating hydroelectric power which results in nonconsumptive use of the water, watering livestock or wildlife purposes360.00

plus \$3 per acre-foot approved or fraction thereof.



Except for generating hydroelectric power, watering livestock or wildlife purposes, for issuing and recording each permit to change an existing water right whether temporary or permanent for any purpose.....300.00
plus \$3 per acre-foot approved or fraction thereof.

For issuing and recording each permit for additional rate of diversion from a well where no additional volume of water is granted.....1,000.00

For issuing and recording each permit to change the point of diversion or place of use of an existing right whether temporary or permanent for irrigation purposes, a maximum fee of.....750.00

For issuing and recording each permit to appropriate or change the point of diversion or place of use of an existing right whether temporary or permanent for watering livestock or wildlife purposes240.00
plus \$50 for each cubic foot of water per second approved or fraction thereof.

For issuing and recording each permit to appropriate or change an existing right whether temporary or permanent for water for generating hydroelectric power which results in nonconsumptive use of the water480.00
plus \$50 for each cubic foot per second of water approved or fraction thereof.

For filing and examining a request for a waiver in connection with an application to drill a well.....120.00



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| For filing and examining a notice of intent to drill a well..... | 25.00 |
| For filing and examining an affidavit to relinquish water rights in favor of use of water for domestic wells..... | 300.00 |
| For filing a secondary application under a reservoir permit | 300.00 |
| For approving and recording a secondary permit under a reservoir permit | 540.00 |
| For reviewing each tentative subdivision map | 180.00 |
| plus \$1 per lot. | |
| For reviewing and approving each final subdivision map | 120.00 |
| For storage approved under a dam permit for privately owned nonagricultural dams which store more than 50 acre-feet | 480.00 |
| plus \$1.25 per acre-foot storage capacity. This fee includes the cost of inspection and must be paid annually. | |
| For flood control detention basins..... | 480.00 |
| plus \$1.25 per acre-foot storage capacity. This fee includes the cost of inspection and must be paid annually. | |
| For filing proof of completion of work | 60.00 |
| For filing proof of beneficial use..... | 60.00 |
| For issuing and recording a certificate upon approval of the proof of beneficial use..... | 350.00 |
| For filing proof of resumption of a water right | 360.00 |
| For filing any protest | 30.00 |



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| For filing any application for extension of time within which to file proofs, of completion or beneficial use, for each year for which the extension of time is sought | 120.00 |
| For filing any application for extension of time to prevent a forfeiture, for each year for which the extension of time is sought..... | 120.00 |
| For reviewing a cancellation of a water right pursuant to a petition for review | 360.00 |
| For examining and filing a report of conveyance filed pursuant to paragraph (a) of subsection 1 of NRS 533.384..... | 120.00 |
| plus \$20 per conveyance document. | |
| For filing any other instrument..... | 10.00 |
| For making a copy of any document recorded or filed in the Office of the State Engineer, for the first page | 1.00 |
| For each additional page | .20 |
| For certifying to copies of documents, records or maps, for each certificate | 6.00 |
| For each copy of any full size drawing or map..... | 6.00 |
| For each color copy of any full size drawing or map (2' x 3') | 12.00 |
| For colored mylar plots | 10.00 |
| <i>For examining and filing an application to create a water bank.....</i> | <i>360.00</i> |

This fee includes the cost of publication, which is \$50.



2. When fees are not specified in subsection 1 for work required of the Office of the State Engineer, the State Engineer shall collect the actual cost of the work.

3. Except as otherwise provided in this subsection, all fees collected by the State Engineer under the provisions of this section must be deposited in the State Treasury for credit to the State General Fund. All fees received for copies of any drawing or map must be kept by the State Engineer and used only to pay the costs of printing, replacement and maintenance of printing equipment. Any publication fees received which are not used by the State Engineer for publication expenses must be returned to the persons who paid the fees. If, after exercising due diligence, the State Engineer is unable to make the refunds, the State Engineer shall deposit the fees in the State Treasury for credit to the State General Fund.

Sec. 48. NRS 533.450 is hereby amended to read as follows:

533.450 1. Except as otherwise provided in NRS 533.353, *and section 22 of this act*, any person feeling aggrieved by any order or decision of the State Engineer, acting in person or through the assistants of the State Engineer or the water commissioner, affecting the person's interests, when the order or decision relates to the administration of determined rights or is made pursuant to NRS 533.270 to 533.445, inclusive, *and sections 2 to 38, inclusive, of this act*, or NRS 533.481, 534.193, 535.200 or 536.200, may have the same reviewed by a proceeding for that purpose, insofar as may be in the nature of an appeal, which must be initiated in the proper court of the county in which the matters affected or a portion thereof are situated, but on stream systems where a decree of court has been entered, the action must be initiated in the court that entered the decree. The order or decision of the State Engineer remains in full force and effect



unless proceedings to review the same are commenced in the proper court within 30 days after the rendition of the order or decision in question and notice thereof is given to the State Engineer as provided in subsection 3.

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

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

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

5. An order or decision of the State Engineer must not be stayed unless the petitioner files a written motion for a stay with the court and serves the motion personally or by registered or certified mail upon the State Engineer, the applicant or other real party in interest and each party



of record within 10 days after the petitioner files the petition for judicial review. Any party may oppose the motion and the petitioner may reply to any such opposition. In determining whether to grant or deny the motion for a stay, the court shall consider:

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

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

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

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

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

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

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

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



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

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

Sec. 49. NRS 533.480 is hereby amended to read as follows:

533.480 Any person violating any of the provisions of NRS 533.005 to 533.475, inclusive, *and sections 2 to 38, inclusive, of this act* shall be guilty of a misdemeanor.

Sec. 50. NRS 533.515 is hereby amended to read as follows:

533.515 1. No permit for the appropriation of water or application to change the point of diversion, manner of use or place of use under an existing water right may be denied because of the fact that the point of diversion described in the application for the permit, or any portion of the works in the application described and to be constructed for the purpose of storing, conserving, diverting or distributing the water are situated in any other state; but in all such cases where the place of intended use, or the lands, or part of the lands identified as the place of use, are situated within this state, the permit must be issued as in other cases, pursuant to the provisions of NRS 533.324 to 533.450, inclusive, *and sections 2 to 38, inclusive, of this act*, and chapter 534 of NRS.

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



Sec. 51. NRS 534.090 is hereby amended to read as follows:

534.090 1. Except as otherwise provided in this section, *and section 31 of this act*, failure for 5 successive years after April 15, 1967, on the part of the holder of any right, whether it is an adjudicated right, an unadjudicated right or a right for which a certificate has been issued pursuant to NRS 533.425, and further whether the right is initiated after or before March 25, 1939, to use beneficially all or any part of the underground water for the purpose for which the right is acquired or claimed, works a forfeiture of both undetermined rights and determined rights to the use of that water to the extent of the nonuse.

2. If the records of the State Engineer or any other documents obtained by or provided to the State Engineer indicate 4 or more consecutive years of nonuse of all or any part of a water right which is governed by this chapter:

(a) The State Engineer shall notify the owner of the water right, as determined in the records of the Office of the State Engineer, by registered or certified mail of the nonuse and that the owner has 1 year after the date of the notice of nonuse in which to use the water right beneficially and to provide proof of such use to the State Engineer or apply for relief pursuant to subsection 3 to avoid forfeiting the water right.

(b) If, after 1 year after the date of the notice of nonuse pursuant to paragraph (a), proof of resumption of beneficial use is not filed in the Office of the State Engineer, the State Engineer shall, unless the State Engineer has granted a request to extend the time necessary to work a forfeiture of the water right, send a final notice to the owner of the water right, as determined in the records of the Office of the State Engineer, by registered or certified mail, that the water right



is held for forfeiture. If the owner of the water right, within 30 days after the date of such final notice, fails to file the required proof of resumption of beneficial use or an application for an extension of time to prevent forfeiture, the State Engineer shall declare the right, or the portion of the right not returned to beneficial use, forfeited. The State Engineer shall send notice of the declaration of forfeiture, by registered or certified mail, to the owner of record, as determined in the records of the Office of the State Engineer, of the water right that has been declared forfeited.

(c) If, after receipt of a notice of the declaration of forfeiture pursuant to paragraph (b), the owner of record of the water right fails to appeal the ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the forfeiture becomes final. Upon the forfeiture of the water right, the water reverts to the public and is available for further appropriation, subject to existing rights.

3. The State Engineer may, upon the request of the holder of any right described in subsection 1, extend the time necessary to work a forfeiture under subsection 2 if the request is made before the expiration of the time necessary to work a forfeiture. Except as otherwise provided in subsection 4, the State Engineer may grant, upon request and for good cause shown, any number of extensions, but a single extension must not exceed 1 year. In determining whether to grant or deny a request, the State Engineer shall, among other reasons, consider:

(a) Whether the holder has submitted proof and evidence that the holder is proceeding in good faith and with reasonable diligence to resume use of the water beneficially for the purpose for which the holder's right is acquired or claimed;



(b) The number of years during which the water has not been put to the beneficial use for which the right is acquired or claimed;

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

(d) Whether the water right is located in a basin within a county under a declaration of drought by the Governor, United States Secretary of Agriculture or the President of the United States;

(e) Whether the holder has demonstrated efforts to conserve water which have resulted in a reduction in water consumption;

(f) Whether the water right is located in a basin that has been designated as a critical management area by the State Engineer pursuant to subsection 7 of NRS 534.110;

(g) The date of priority of the water right as it relates to the potential curtailment of water use in the basin;

(h) The availability of water in the basin, including, without limitation, whether withdrawals of water consistently exceed the perennial yield of the basin; and

(i) Any orders restricting use or appropriation of water in the basin.

↪ The State Engineer shall notify, by registered or certified mail, the owner of the water right, as determined in the records of the Office of the State Engineer, of whether the State Engineer has granted or denied the holder's request for an extension pursuant to this subsection. If the State Engineer grants an extension pursuant to this subsection and, before the expiration of that extension, proof of resumption of beneficial use or another request for an extension is not filed in



the Office of the State Engineer, the State Engineer shall send a final notice to the owner of the water right, by registered or certified mail, that the water right will be declared forfeited if the owner of the water right fails to file the required proof of resumption of beneficial use or an application for an extension of time to prevent forfeiture within 30 days after the date of the final notice. If the owner of the water right fails to file the required proof of resumption of beneficial use or an application for an extension of time to prevent forfeiture within 30 days after the date of such final notice, the State Engineer shall declare the water right, or the portion of the right not returned to beneficial use, forfeited.

4. If the State Engineer grants an extension pursuant to subsection 1 in a basin:

(a) Where withdrawals of groundwater consistently exceed the perennial yield of the basin;

or

(b) That has been designated as a critical management area by the State Engineer pursuant to subsection 7 of NRS 534.110,

↪ a single extension must not exceed 3 years, but any number of extensions may be granted to the holder of such a right.

5. The failure to receive a notice pursuant to subsection 2 or 3 does not nullify the forfeiture or extend the time necessary to work the forfeiture of a water right.

6. A right to use underground water whether it is vested or otherwise may be lost by abandonment. If the State Engineer, in investigating a groundwater source, upon which there has been a prior right, for the purpose of acting upon an application to appropriate water from the same source, is of the belief from his or her examination that an abandonment has taken place,



the State Engineer shall so state in the ruling approving the application. If, upon notice by registered or certified mail to the owner of record who had the prior right, the owner of record of the prior right fails to appeal the ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the alleged abandonment declaration as set forth by the State Engineer becomes final.

Sec. 52. NRS 37.010 is hereby amended to read as follows:

37.010 1. Subject to the provisions of this chapter and the limitations in subsections 2 and 3 ~~and~~ *and section 35 of this act*, the right of eminent domain may be exercised in behalf of the following public uses:

- (a) Federal activities. All public purposes authorized by the Government of the United States.
- (b) State activities. Public buildings and grounds for the use of the State, the Nevada System of Higher Education and all other public purposes authorized by the Legislature.
- (c) County, city, town and school district activities. Public buildings and grounds for the use of any county, incorporated city or town, or school district, reservoirs, water rights, canals, aqueducts, flumes, ditches or pipes for conducting water for the use of the inhabitants of any county, incorporated city or town, for draining any county, incorporated city or town, for raising the banks of streams, removing obstructions therefrom, and widening, deepening or straightening their channels, for roads, streets and alleys, and all other public purposes for the benefit of any county, incorporated city or town, or the inhabitants thereof.
- (d) Bridges, toll roads, railroads, street railways and similar uses. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, roads for



transportation by traction engines or locomotives, roads for logging or lumbering purposes, and railroads and street railways for public transportation.

(e) Ditches, canals, aqueducts for smelting, domestic uses, irrigation and reclamation. Reservoirs, dams, water gates, canals, ditches, flumes, tunnels, aqueducts and pipes for supplying persons, mines, mills, smelters or other works for the reduction of ores, with water for domestic and other uses, for irrigating purposes, for draining and reclaiming lands, or for floating logs and lumber on streams not navigable.

(f) Byroads. Byroads leading from highways to residences and farms.

(g) Public utilities. Lines for telephone, electric light and electric power and sites for plants for electric light and power.

(h) Sewerage. Sewerage of any city, town, settlement of not less than 10 families or any public building belonging to the State or college or university.

(i) Water for generation and transmission of electricity. Canals, reservoirs, dams, ditches, flumes, aqueducts and pipes for supplying and storing water for the operation of machinery to generate and transmit electricity for power, light or heat.

(j) Cemeteries, public parks. Cemeteries or public parks.

(k) Pipelines for petroleum products, natural gas. Pipelines for the transportation of crude petroleum, petroleum products or natural gas, whether interstate or intrastate.

(l) Aviation. Airports, facilities for air navigation and aerial rights-of-way.

(m) Monorails. Monorails and any other overhead or underground system used for public transportation.



(n) Video service providers. Video service providers that are authorized pursuant to chapter 711 of NRS to operate a video service network. The exercise of the power of eminent domain may include the right to use the wires, conduits, cables or poles of any public utility if:

(1) It creates no substantial detriment to the service provided by the utility;

(2) It causes no irreparable injury to the utility; and

(3) The Public Utilities Commission of Nevada, after giving notice and affording a hearing to all persons affected by the proposed use of the wires, conduits, cables or poles, has found that it is in the public interest.

(o) Redevelopment. The acquisition of property pursuant to chapter 279 of NRS.

2. Notwithstanding any other provision of law and except as otherwise provided in this subsection, the public uses for which private property may be taken by the exercise of eminent domain do not include the direct or indirect transfer of any interest in the property to another private person or entity. Property taken by the exercise of eminent domain may be transferred to another private person or entity in the following circumstances:

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:



(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or facility that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on any such lease.

(c) The entity that took the property:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under the threat of eminent domain for roadway or highway purposes, to relocate public or private structures or to avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

3. The entity that is taking property by the exercise of eminent domain has the burden of proving that the taking is for a public use.

4. For the purposes of this section, an airport authority or any public airport is not a private person or entity.



Sec. 53. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 54. 1. If a water bank is created pursuant to the provisions of sections 2 to 38, inclusive, of this act:

(a) The water bank shall not on or after January 1, 2032:

- (1) Receive any deposit of a perfected water right; or
- (2) Approve any delivery request or deliver any banked water.

(b) A banked water right that is deposited into a water bank on December 31, 2031, reverts back to the owner on January 1, 2032, subject to the permit that existed before the State Engineer approved the change application to deposit the perfected water right into the water bank.

2. As used in this section:

- (a) “Banked water” has the meaning ascribed to it in section 4 of this act.
- (b) “Banked water right” has the meaning ascribed to it in section 5 of this act.
- (c) “Delivery request” has the meaning ascribed to it in section 8 of this act.
- (d) “Deposit” has the meaning ascribed to it in section 9 of this act.
- (e) “Perfected water right” has the meaning ascribed to it in section 11 of this act.
- (f) “Water bank” has the meaning ascribed to it in section 15 of this act.

Sec. 55. This act becomes effective on July 1, 2021, and expires by limitation on December 31, 2031.

