

ASSEMBLY BILL NO. 410—ASSEMBLYMEN GOEDHART, SHERWOOD;  
GOICOECHEA, GRADY, HAMBRICK, HANSEN, HARDY,  
HICKEY, KIRNER, KITE, LIVERMORE AND STEWART

MARCH 21, 2011

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JOINT SPONSORS: SENATORS RHOADS AND SETTELMEYER

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Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to the filing by a governmental entity of a protest against the granting of certain applications relating to water rights. (BDR 48-360)

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

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

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AN ACT relating to water; requiring that protests against the granting of certain applications relating to water rights by a government, governmental agency or political subdivision of a government be verified or signed by the person in charge of the government, agency or political subdivision; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Under existing law, any interested person, including a governmental entity, is  
2 authorized to file a written protest with the State Engineer against the granting of an  
3 application for a permit to appropriate water or to change the place of diversion, the  
4 manner of use or the place of use of water already appropriated. (NRS 533.010,  
5 533.325, 533.365) In addition, any person, including a governmental entity, who  
6 may be adversely affected by a project for the recharge, storage and recovery of  
7 water is authorized under existing law to file a written protest with the State  
8 Engineer against the granting of an application for a permit to operate the project.  
9 (NRS 534.014, 534.250, 534.270)

10 This bill requires that any protest which is filed by a government, governmental  
11 agency or political subdivision against the granting of an application for a permit to  
12 change the place of diversion, the manner of use or the place of use of water  
13 already appropriated within the same basin or for a permit to operate a project for



14 the recharge, storage and recovery of water be verified or signed by the director,  
15 administrator, chief, head or other person in charge of that government,  
16 governmental agency or political subdivision. However, this bill does not change  
17 the requirements under existing law for a protest by a government, governmental  
18 agency or political subdivision against the granting of an application for a permit to  
19 appropriate water or an application that involves an interbasin transfer of  
20 groundwater. (NRS 533.365)

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

1 **Section 1.** NRS 533.365 is hereby amended to read as follows:

2 533.365 1. Any person interested may, within 30 days after  
3 the date of last publication of the notice of application, file with the  
4 State Engineer a written protest against the granting of the  
5 application, setting forth with reasonable certainty the grounds of  
6 such protest, which, *except as otherwise provided in subsection 2,*  
7 must be verified by the affidavit of the protestant, or an agent or  
8 attorney thereof.

9 2. *If the application is for a permit to change the place of*  
10 *diversion, manner of use or place of use of water already*  
11 *appropriated within the same basin, a protest filed against the*  
12 *granting of such an application by a government, governmental*  
13 *agency or political subdivision of a government must be verified by*  
14 *the affidavit of:*

15 (a) *Except as otherwise provided in paragraph (b), the*  
16 *director, administrator, chief, head or other person in charge of*  
17 *the government, governmental agency or political subdivision; or*

18 (b) *If the governmental agency or political subdivision is a*  
19 *division or other part of a department, the director or other person*  
20 *in charge of that department in this State, including, without*  
21 *limitation:*

22 (1) *The Regional Forester for the Intermountain Region, if*  
23 *the protest is filed by the United States Forest Service;*

24 (2) *The State Director of the Nevada State Office of the*  
25 *Bureau of Land Management, if the protest is filed by the Bureau*  
26 *of Land Management;*

27 (3) *The Regional Director of the Pacific Southwest Region,*  
28 *if the protest is filed by the United States Fish and Wildlife*  
29 *Service;*

30 (4) *The Regional Director of the Pacific West Region, if the*  
31 *protest is filed by the National Park Service;*

32 (5) *The Director of the State Department of Conservation*  
33 *and Natural Resources, if the protest is filed by any division of*  
34 *that Department; or*



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1           ***(6) The chair of the board of county commissioners, if the***  
2 ***protest is filed by a county.***

3           **3.** On receipt of a protest ~~[3]~~ ***that complies with the***  
4 ***requirements of subsection 1 or 2,*** the State Engineer shall advise  
5 the applicant whose application has been protested of the fact that  
6 the protest has been filed with the State Engineer, which advice  
7 must be sent by certified mail.

8           ~~[3-]~~ **4.** The State Engineer shall consider the protest, and may,  
9 in his or her discretion, hold hearings and require the filing of such  
10 evidence as the State Engineer may deem necessary to a full  
11 understanding of the rights involved. The State Engineer shall give  
12 notice of the hearing by certified mail to both the applicant and  
13 the protestant. The notice must state the time and place at which the  
14 hearing is to be held and must be mailed at least 15 days before the  
15 date set for the hearing.

16           ~~[4-]~~ **5.** Each applicant and each protestant shall, in accordance  
17 with a schedule established by the State Engineer, provide to the  
18 State Engineer and to each protestant and each applicant information  
19 required by the State Engineer relating to the application or protest.

20           ~~[5-]~~ **6.** If the State Engineer holds a hearing pursuant to  
21 subsection ~~[3-]~~ **4,** the State Engineer shall render a decision on each  
22 application not later than 240 days after the later of:

23           (a) The date all transcripts of the hearing become available to  
24 the State Engineer; or

25           (b) The date specified by the State Engineer for the filing of any  
26 additional information, evidence, studies or compilations requested  
27 by the State Engineer. The State Engineer may, for good cause  
28 shown, extend any applicable period.

29           ~~[6-]~~ **7.** The State Engineer shall adopt rules of practice  
30 regarding the conduct of a hearing held pursuant to subsection ~~[3-]~~  
31 **4.** The rules of practice must be adopted in accordance with the  
32 provisions of NRS 233B.040 to 233B.120, inclusive, and codified in  
33 the Nevada Administrative Code. The technical rules of evidence do  
34 not apply at such a hearing.

35           ~~[7-]~~ **8.** The provisions of this section do not prohibit the  
36 noticing of a new period of 45 days in which a person may file with  
37 the State Engineer a written protest against the granting of the  
38 application, if such notification is required to be given pursuant to  
39 subsection 8 of NRS 533.370.

40           **Sec. 2.** NRS 534.270 is hereby amended to read as follows:

41           534.270 1. Upon receipt of an application for a permit to  
42 operate a project, the State Engineer shall endorse on the application  
43 the date it was received and keep a record of the application. The  
44 State Engineer shall conduct an initial review of the application  
45 within 45 days after receipt of the application. If the State Engineer



1 determines in the initial review that the application is incomplete,  
2 the State Engineer shall notify the applicant. The application is  
3 incomplete until the applicant files all the information requested in  
4 the application. The State Engineer shall determine whether the  
5 application is correct within 180 days after receipt of a complete  
6 application. The State Engineer may request additional information  
7 from the applicant. The State Engineer may conduct such  
8 independent investigations as are necessary to determine whether  
9 the application should be approved or rejected.

10 2. If the application is determined to be complete and correct,  
11 the State Engineer, within 30 days after such a determination or a  
12 longer period if requested by the applicant, shall cause notice of the  
13 application to be given once each week for 2 consecutive weeks in a  
14 newspaper of general circulation in the county or counties in which  
15 persons reside who could reasonably be expected to be affected by  
16 the project. The notice must state:

17 (a) The legal description of the location of the proposed project;  
18 (b) A brief description of the proposed project including its  
19 capacity;

20 (c) That any person who may be adversely affected by the  
21 project may file a written protest with the State Engineer within 30  
22 days after the last publication of the notice;

23 (d) The date of the last publication;

24 (e) That the grounds for protesting the project are limited to  
25 whether the project would be in compliance with subsection 2 of  
26 NRS 534.250;

27 (f) The name of the applicant; and

28 (g) That a protest must:

29 (1) State the name and mailing address of the protester;

30 (2) Clearly set forth the reason why the permit should not be  
31 issued; and

32 (3) Be signed by the protester or the protester's agent or  
33 attorney ***or, if the protester is a government, governmental***  
34 ***agency or political subdivision of a government, be approved and***  
35 ***signed in the manner specified in paragraph (g) of subsection 3.***

36 3. A protest to a proposed project:

37 (a) May be made by any person who may be adversely affected  
38 by the project;

39 (b) Must be in writing;

40 (c) Must be filed with the State Engineer within 30 days after  
41 the last publication of the notice;

42 (d) Must be upon a ground listed in subsection 2 of  
43 NRS 534.250;

44 (e) Must state the name and mailing address of the protester;



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1 (f) Must clearly set forth the reason why the permit should not  
2 be issued; and

3 (g) ~~[Must]~~ *Except as otherwise provided in this paragraph,*  
4 *must* be signed by the protester or the protester's agent or attorney.  
5 *If the protester is a government, governmental agency or political*  
6 *subdivision of a government, the protest must be:*

7 (1) *Except as otherwise provided in subparagraph (2),*  
8 *approved and signed by the director, administrator, chief, head or*  
9 *other person in charge of the government, governmental agency*  
10 *or political subdivision; or*

11 (2) *If the governmental agency or political subdivision is a*  
12 *division or other part of a department, approved and signed by the*  
13 *director or other person in charge of that department in this State,*  
14 *including, without limitation:*

15 (I) *The Regional Forester for the Intermountain*  
16 *Region, if the protest is filed by the United States Forest Service;*

17 (II) *The State Director of the Nevada State Office of the*  
18 *Bureau of Land Management, if the protest is filed by the Bureau*  
19 *of Land Management;*

20 (III) *The Regional Director of the Pacific Southwest*  
21 *Region, if the protest is filed by the United States Fish and*  
22 *Wildlife Service;*

23 (IV) *The Regional Director of the Pacific West Region,*  
24 *if the protest is filed by the National Park Service;*

25 (V) *The Director of the State Department of*  
26 *Conservation and Natural Resources, if the protest is filed by any*  
27 *division of that Department; or*

28 (VI) *The chair of the board of county commissioners, if*  
29 *the protest is filed by a county.*

30 4. Upon receipt of a protest, the State Engineer shall advise the  
31 applicant by certified mail that a protest has been filed.

32 5. Upon receipt of a protest, or upon the motion of the State  
33 Engineer, the State Engineer may hold a hearing. Not less than 30  
34 days before the hearing, the State Engineer shall send by certified  
35 mail notice of the hearing to the applicant and any person who filed  
36 a protest.

37 6. The State Engineer shall either approve or deny each  
38 application within 1 year after the final date for filing a protest,  
39 unless the State Engineer has received a written request from the  
40 applicant to postpone making a decision or, in the case of a  
41 protested application, from both the protester and the applicant. The  
42 State Engineer may delay action on the application pursuant to  
43 paragraph (c) of subsection 2 of NRS 533.370.



- 1       7. Any person aggrieved by any decision of the State Engineer
- 2 made pursuant to subsection 6 may appeal that decision to the
- 3 district court pursuant to NRS 533.450.
- 4       **Sec. 3.** This act becomes effective on July 1, 2011.

