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SENATE BILL NO. 231—COMMITTEE ON NATURAL RESOURCES

MARCH 1, 2017

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Referred to Committee on Natural Resources

SUMMARY—Revises provisions relating to water. (BDR 48-736)

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

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

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AN ACT relating to water; requiring the State Engineer to prepare a water budget and inventory of groundwater for each basin in this State; requiring an application for certain mining permits to include certain information relating to the use of water; requiring the State Engineer to post on the Internet certain information relating to the consumptive use of water by mining projects; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, the State Engineer is charged with managing the  
2 appropriation of water in this State. (Title 48 of NRS) **Section 1** of this bill requires  
3 the State Engineer to prepare a water budget and calculate and maintain an  
4 inventory of groundwater for each basin located in whole or in part in this State.  
5 **Section 2** of this bill declares that it is the policy of this State to recognize the  
6 importance of maintaining basins in a healthy state by ensuring all water  
7 appropriations are included when calculating the water budget for the basins.  
8 Existing law requires any person who wishes to appropriate any of the public  
9 waters or change the point of diversion, manner of use or place of use of water in  
10 Nevada to first apply to the State Engineer for a permit to do so. (NRS 533.325)  
11 **Section 3** of this bill requires an application for such a permit for mining purposes  
12 to include the amount of water that will be used consumptively and the amount of  
13 water that will be returned to the basin from which the water was drawn. **Section 4**  
14 of this bill requires the State Engineer to post on the Internet the amount of water  
15 that will be used consumptively and returned to the basin from which the water is  
16 drawn for every mining project.



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

1       **Section 1.** Chapter 532 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3       *For each basin located in whole or in part in the State, the*  
4 *State Engineer shall prepare a water budget and calculate and*  
5 *maintain an inventory of water which includes, without limitation:*

6       1. *The total amount of groundwater appropriated in the basin*  
7 *in accordance with decreed, certified and permitted rights*  
8 *regardless of whether the water appropriations are temporary in*  
9 *nature;*

10       2. *An estimate of the amount of water used by domestic wells*  
11 *in the basin; and*

12       3. *An estimate of the amount of all groundwater that is*  
13 *available for appropriation in the basin.*

14       **Sec. 2.** NRS 533.024 is hereby amended to read as follows:

15       533.024 The Legislature declares that:

16       1. It is the policy of this State:

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

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

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

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

33       (e) *To recognize the importance of maintaining all basins in a*  
34 *healthy state by ensuring that all water appropriations, including,*  
35 *without limitation, water appropriations that are temporary in*  
36 *nature, are included when calculating the water budget for each*  
37 *basin.*

38       2. The procedures in this chapter for changing the place of  
39 diversion, manner of use or place of use of water, and for  
40 confirming a report of conveyance, are not intended to have the  
41 effect of quieting title to or changing ownership of a water right and



1 that only a court of competent jurisdiction has the power to  
2 determine conflicting claims to ownership of a water right.

3 **Sec. 3.** NRS 533.340 is hereby amended to read as follows:

4 533.340 In addition to the requirements of NRS 533.335, the  
5 application shall contain:

6 1. If for irrigation purposes, except in case of an application for  
7 a permit to store water, the number of acres to be irrigated and a  
8 description by legal subdivisions, where possible, of the lands to be  
9 irrigated.

10 2. If for power purposes, the vertical head under which the  
11 water will be applied, the location of the proposed powerhouse, and,  
12 as near as may be, the use to which the power is to be applied.

13 3. If for municipal supply or for domestic use, the approximate  
14 number of persons to be served, and the approximate future  
15 requirement.

16 4. If for mining purposes, the proposed method of applying and  
17 utilizing the water ~~H~~, *the amount of water that will be used*  
18 *consumptively and the amount of water that will be returned to the*  
19 *basin from which the water was drawn.*

20 5. If for stock-watering purposes, the approximate number and  
21 character of animals to be watered.

22 6. If for any purpose contemplating the storage of waters, in  
23 addition to the information required in applications naming the  
24 purpose, the dimensions and location of the proposed dam, the  
25 capacity of the proposed reservoir, and a description of the land to  
26 be submerged by the impounded waters.

27 7. If for additional rate of diversion where no additional  
28 volume of water is granted, sufficient information demonstrating the  
29 need for the additional rate of diversion.

30 **Sec. 4.** NRS 533.370 is hereby amended to read as follows:

31 533.370 1. Except as otherwise provided in this section and  
32 NRS 533.345, 533.371, 533.372 and 533.503, the State Engineer  
33 shall approve an application submitted in proper form which  
34 contemplates the application of water to beneficial use if:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

35 (b) If an application is protested.

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

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

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

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



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

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

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

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

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

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

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



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

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

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

19 12. *The State Engineer shall post on the Internet website of*  
20 *the State Engineer the amount of water that is used consumptively*  
21 *and the amount of water that is returned to the basin from which*  
22 *the water is drawn for every mining project.*

23 13. As used in this section, "domestic well" has the meaning  
24 ascribed to it in NRS 534.350.

25 **Sec. 5.** This act becomes effective on July 1, 2017.

