

SENATE BILL NO. 336—SENATOR HARDY

MARCH 17, 2003

Referred to Committee on Natural Resources

SUMMARY—Makes various changes relating to water rights.  
(BDR 48-848)

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.

AN ACT relating to water; authorizing the State Engineer to postpone action on certain applications for water rights; providing that certain applications for water rights remain active until acted upon by the State Engineer; requiring the State Engineer to provide certain notices to persons who submitted reports of conveyance if he confirms those reports; requiring the State Engineer to quantify in acre-feet certain water rights, to give certain persons notice concerning those water rights and to file a notice concerning those water rights with the office of the county recorder of the county in which the water is appropriated; and providing other matters properly relating thereto.

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

1     **Section 1.** NRS 533.360 is hereby amended to read as follows:  
2     533.360 1. Except as otherwise provided in subsection 4,  
3     NRS 533.345 and subsection ~~3~~ 4 of NRS 533.370, when an  
4     application is filed in compliance with this chapter , the State  
5     Engineer shall, within 30 days, publish or cause to be published  
6     once a week for 4 consecutive weeks in a newspaper of general  
7     circulation and printed and published in the county where the water  
8     is sought to be appropriated, a notice of the application ~~3~~ which  
9     sets forth:



\* S B 3 3 6 R 1 \*

- 1 (a) That the application has been filed.
- 2 (b) The date of the filing.
- 3 (c) The name and address of the applicant.
- 4 (d) The name of the source from which the appropriation is to be
- 5 made.
- 6 (e) The location of the place of diversion, described by legal
- 7 subdivision or metes and bounds and by a physical description of
- 8 that place of diversion.
- 9 (f) The purpose for which the water is to be appropriated.
- 10 The publisher shall add thereto the date of the first publication and
- 11 the date of the last publication.

12 2. Except as otherwise provided in subsection 4, proof of  
13 publication must be filed within 30 days after the final day of  
14 publication. The State Engineer shall pay for the publication from  
15 the application fee. If the application is cancelled for any reason  
16 before publication, the State Engineer shall return to the applicant  
17 that portion of the application fee collected for publication.

18 3. If the application is for a proposed well:

- 19 (a) For municipal, quasi-municipal or industrial use; and
- 20 (b) Whose reasonably expected rate of diversion is one-half
- 21 cubic foot per second or more,
- 22 the applicant shall mail a copy of the notice of application to each
- 23 owner of real property containing a domestic well that is within
- 24 2,500 feet of the proposed well, to his address as shown in the latest
- 25 records of the county assessor. If there are not more than six such
- 26 wells, notices must be sent to each owner by certified mail, return
- 27 receipt requested. If there are more than six such wells, at least six
- 28 notices must be sent to owners by certified mail, return receipt
- 29 requested. The return receipts from these notices must be filed with
- 30 the State Engineer before he may consider the application.

31 4. The provisions of this section do not apply to an  
32 environmental permit.

33 **Sec. 2.** NRS 533.370 is hereby amended to read as follows:

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

- 38 (a) The application is accompanied by the prescribed fees;
- 39 (b) The proposed use or change, if within an irrigation district,
- 40 does not adversely affect the cost of water for other holders of water
- 41 rights in the district or lessen the efficiency of the district in its
- 42 delivery or use of water; and
- 43 (c) The applicant provides proof satisfactory to the State
- 44 Engineer of:



- 1 (1) His intention in good faith to construct any work  
2 necessary to apply the water to the intended beneficial use with  
3 reasonable diligence; and  
4 (2) His financial ability and reasonable expectation actually  
5 to construct the work and apply the water to the intended beneficial  
6 use with reasonable diligence.
- 7 2. Except as otherwise provided in subsection ~~6.1~~ 7, the State  
8 Engineer shall approve or reject each application within 1 year after  
9 the final date for filing a protest. However:
- 10 (a) Action may be postponed by the State Engineer upon written  
11 authorization to do so by the applicant or, if an application is  
12 protested, by the protestant and the applicant; ~~and~~
- 13 (b) *Action may be postponed by the State Engineer if the*  
14 *purpose for which the application was made is municipal use; and*
- 15 (c) In areas where studies of water supplies have been  
16 determined to be necessary by the State Engineer pursuant to NRS  
17 533.368 or where court actions are pending, the State Engineer may  
18 withhold action until it is determined there is unappropriated water  
19 or the court action becomes final.
- 20 3. *If the State Engineer does not act upon an application*  
21 *within 1 year after the final date for filing a protest, the*  
22 *application remains active until acted upon by the State Engineer.*
- 23 4. Except as otherwise provided in subsection ~~6.1~~ 7, where  
24 there is no unappropriated water in the proposed source of supply,  
25 or where its proposed use or change conflicts with existing rights, or  
26 with protectible interests in existing domestic wells as set forth in  
27 NRS 533.024, or threatens to prove detrimental to the public  
28 interest, the State Engineer shall reject the application and refuse to  
29 issue the requested permit. If a previous application for a similar use  
30 of water within the same basin has been rejected on those grounds,  
31 the new application may be denied without publication.
- 32 ~~4.1~~ 5. In determining whether an application for an interbasin  
33 transfer of ground water must be rejected pursuant to this section,  
34 the State Engineer shall consider:
- 35 (a) Whether the applicant has justified the need to import the  
36 water from another basin;
- 37 (b) If the State Engineer determines that a plan for conservation  
38 of water is advisable for the basin into which the water is to be  
39 imported, whether the applicant has demonstrated that such a plan  
40 has been adopted and is being effectively carried out;
- 41 (c) Whether the proposed action is environmentally sound as it  
42 relates to the basin from which the water is exported;
- 43 (d) Whether the proposed action is an appropriate long-term use  
44 which will not unduly limit the future growth and development in  
45 the basin from which the water is exported; and



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

3 ~~[5.]~~ 6. If a hearing is held regarding an application, the decision  
4 of the State Engineer must be in writing and include findings of fact,  
5 conclusions of law and a statement of the underlying facts  
6 supporting the findings of fact. The written decision may take the  
7 form of a transcription of an oral ruling. The rejection or approval of  
8 an application must be endorsed on a copy of the original  
9 application, and a record *must be* made of the endorsement in the  
10 records of the State Engineer. The copy of the application so  
11 endorsed must be returned to the applicant. Except as otherwise  
12 provided in subsection ~~[7.]~~ 8, if the application is approved, the  
13 applicant may, on receipt thereof, proceed with the construction of  
14 the necessary works and take all steps required to apply the water to  
15 beneficial use and to perfect the proposed appropriation. If the  
16 application is rejected, the applicant may take no steps toward  
17 the prosecution of the proposed work or the diversion and use of the  
18 public water while the rejection continues in force.

19 ~~[6.]~~ 7. The provisions of subsections 1 to ~~[4.]~~ 5, inclusive, do  
20 not apply to an application for an environmental permit.

21 ~~[7.]~~ 8. The provisions of subsection ~~[5.]~~ 6 do not authorize the  
22 recipient of an approved application to use any state land  
23 administered by the Division of State Lands of the State Department  
24 of Conservation and Natural Resources without the appropriate  
25 authorization for that use from the State Land Registrar.

26 ~~[8.]~~ 9. As used in this section, "interbasin transfer of ground  
27 water" means a transfer of ground water for which the proposed  
28 point of diversion is in a different basin than the proposed place of  
29 beneficial use.

30 **Sec. 3.** NRS 533.386 is hereby amended to read as follows:

31 533.386 1. The State Engineer shall confirm that the report of  
32 conveyance required by paragraph (a) of subsection 1 of NRS  
33 533.384 includes all material required by that subsection and that:

- 34 (a) The report is accompanied by the prescribed fee;  
35 (b) No conflict exists in the chain of title that can be determined  
36 by the State Engineer from the conveyance documents or from other  
37 information on file in the office of the State Engineer; and  
38 (c) The State Engineer is able to determine the rate of diversion  
39 and the amount of water conveyed in acre-feet or million gallons  
40 from the conveyance documents or from other information on file in  
41 the office of the State Engineer.

42 2. *If the State Engineer confirms a report of conveyance*  
43 *pursuant to subsection 1, he shall in a timely manner provide a*  
44 *notice of the confirmation to the person who submitted the report*  
45 *of conveyance. The notice must include, without limitation, a*



1 *statement indicating that neither the confirmation of the report of*  
2 *conveyance nor the report of conveyance, if the report sets forth*  
3 *the amount of water conveyed, guarantees that:*

4 (a) *The water right is in good standing with the office of the*  
5 *State Engineer; or*

6 (b) *The amount of water referenced in the notice or in the*  
7 *report of conveyance is the actual amount of water that a person is*  
8 *entitled to use upon conveyance of the application or permit to*  
9 *appropriate any of the public waters, the certificate of*  
10 *appropriation, the adjudicated or unadjudicated water right, or the*  
11 *application or permit to change the place of diversion, manner of*  
12 *use or place of use of water.*

13 3. If the State Engineer determines that the report of  
14 conveyance is deficient, he shall reject the report of conveyance and  
15 return it to the person who submitted it with:

16 (a) An explanation of the deficiency; and

17 (b) A notice stating that the State Engineer will not confirm a  
18 report of conveyance that has been rejected unless the report is  
19 resubmitted with the material required to cure the deficiency. The  
20 notice must also include a statement of the provisions of subsection

21 ~~3.~~ 4.

22 ~~3.~~ 4. The State Engineer shall not consider or treat the person  
23 to whom:

24 (a) An application or permit to appropriate any of the public  
25 waters;

26 (b) A certificate of appropriation;

27 (c) An adjudicated or unadjudicated water right; or

28 (d) An application or permit to change the place of diversion,  
29 manner of use or place of use of water,

30 is conveyed as the owner or holder of the application, right,  
31 certificate or permit for the purposes of this chapter, including,  
32 without limitation, all advisements and other notices required of the  
33 State Engineer and the granting of permits to change the place of  
34 diversion, manner of use or place of use of water, until a report of  
35 the conveyance is confirmed pursuant to subsection 1.

36 **Sec. 4.** NRS 538.171 is hereby amended to read as follows:

37 538.171 1. The Commission shall receive, protect and  
38 safeguard and hold in trust for the State of Nevada all water and  
39 water rights, and all other rights, interests or benefits in and to the  
40 waters described in NRS 538.041 to 538.251, inclusive, and to the  
41 power generated thereon, held by or which may accrue to the State  
42 of Nevada under and by virtue of any Act of the Congress of the  
43 United States or any agreements, compacts or treaties to which the  
44 State of Nevada may become a party, or otherwise.



1       2. Except as otherwise provided in this subsection, applications  
2 for the original appropriation of such waters, or to change the place  
3 of diversion, manner of use or place of use of water covered by the  
4 original appropriation, must be made to the Commission in  
5 accordance with the regulations of the Commission. In considering  
6 such an application, the Commission shall use the criteria set forth  
7 in subsection ~~3~~ 4 of NRS 533.370. The Commission's action on  
8 the application constitutes the recommendation of the State of  
9 Nevada to the United States for the purposes of any federal action  
10 on the matter required by law. The provisions of this subsection do  
11 not apply to supplemental water.

12       3. The Commission shall furnish to the State Engineer a copy  
13 of all agreements entered into by the Commission concerning the  
14 original appropriation and use of such waters. It shall also furnish to  
15 the State Engineer any other information it possesses relating to the  
16 use of water from the Colorado River which the State Engineer  
17 deems necessary to allow him to act on applications for permits for  
18 the subsequent appropriation of these waters after they fall within  
19 the State Engineer's jurisdiction.

20       4. Notwithstanding any provision of chapter 533 of NRS, any  
21 original appropriation and use of the waters described in subsection  
22 1 by the Commission or by any entity to whom or with whom the  
23 Commission has contracted the water is not subject to regulation by  
24 the State Engineer.

25       **Sec. 5.** 1. On or before June 30, 2005, the State Engineer  
26 shall quantify in acre-feet the amount of water that has been  
27 beneficially used for the purpose set forth in the certificate of  
28 appropriation for each certificate of appropriation which:

- 29       (a) Is issued pursuant to NRS 533.425 to appropriate water:  
30           (1) In a county whose population is 400,000 or more; and  
31           (2) From a basin for which the State Engineer keeps  
32 pumping records; and  
33       (b) Expresses the amount of appropriation only in terms of cubic  
34 feet per second.

35       2. The State Engineer shall notify each owner of a water right  
36 described in subsection 1, as determined in the records of the Office  
37 of the State Engineer, by registered or certified mail:

- 38       (a) That the water right has been quantified as required by  
39 subsection 1; and  
40       (b) Of the amount of water that the State Engineer has  
41 determined was beneficially used for the purpose set forth in the  
42 certificate of appropriation.

43       3. The State Engineer shall file a notice with the office of the  
44 county recorder of the county in which water is appropriated  
45 pursuant to a certificate of appropriation described in subsection 1.



1 The notice must contain the information required to be included in  
2 the notice given to the owner of the water right pursuant to  
3 subsection 2.

4 **Sec. 6.** The amendatory provisions of section 2 of this act  
5 apply to:

6 1. Each application described in NRS 533.370 that is made on  
7 or after July 1, 2003; and

8 2. Each such application that is pending with the office of the  
9 State Engineer on July 1, 2003.

10 **Sec. 7.** 1. This act becomes effective on July 1, 2003.

11 2. Section 5 of this act expires by limitation on June 30, 2005.

