

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 2 \*

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



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

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

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

22 ~~[6-]~~ 7. The provisions of subsections 1 to ~~[4-]~~ 5, inclusive, do  
23 not apply to an application for an environmental permit.

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

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

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

34 533.386 1. The State Engineer shall confirm that the report of  
35 conveyance required by paragraph (a) of subsection 1 of NRS  
36 533.384 includes all material required by that subsection and that:

- 37 (a) The report is accompanied by the prescribed fee;  
38 (b) No conflict exists in the chain of title that can be determined  
39 by the State Engineer from the conveyance documents or from other  
40 information on file in the office of the State Engineer; and

41 (c) The State Engineer is able to determine the rate of diversion  
42 and the amount of water conveyed in acre-feet or million gallons  
43 from the conveyance documents or from other information on file in  
44 the office of the State Engineer.



1 2. *If the State Engineer confirms a report of conveyance*  
2 *pursuant to subsection 1, he shall in a timely manner provide a*  
3 *notice of the confirmation to the person who submitted the report*  
4 *of conveyance. The notice must include, without limitation, a*  
5 *statement indicating that neither the confirmation of the report of*  
6 *conveyance nor the report of conveyance, if the report sets forth*  
7 *the amount of water conveyed, guarantees that:*

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

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

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

20 (a) An explanation of the deficiency; and

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

25 ~~3.1~~ 4.

26 ~~3.1~~ 4. The State Engineer shall not consider or treat the person  
27 to whom:

28 (a) An application or permit to appropriate any of the public  
29 waters;

30 (b) A certificate of appropriation;

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

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

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

40 **Sec. 3.5.** 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. He  
44 shall conduct an initial review of the application within 45 days after  
45 receipt of the application. If the State Engineer determines in the



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

34 3. A protest to a proposed project:

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

37 (b) Must be in writing;

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

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

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

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



1 (g) Must be signed by the protester or the protester's agent or  
2 attorney.

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

5 5. Upon receipt of a protest, or upon his own motion, the State  
6 Engineer may hold a hearing. Not less than 30 days before the  
7 hearing, the State Engineer shall send by certified mail notice of the  
8 hearing to the applicant and any person who filed a protest.

9 6. The State Engineer shall either approve or deny each  
10 application within 1 year after the final date for filing a protest,  
11 unless he has received a written request from the applicant to  
12 postpone his decision or, in the case of a protested application, from  
13 both the protester and the applicant. The State Engineer may delay  
14 action on the application pursuant to paragraph ~~(b)~~ (c) of  
15 subsection 2 of NRS 533.370.

16 7. Any person aggrieved by any decision of the State Engineer  
17 made pursuant to subsection 6, may appeal that decision to the  
18 district court pursuant to NRS 533.450.

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

20 538.171 1. The Commission shall receive, protect and  
21 safeguard and hold in trust for the State of Nevada all water and  
22 water rights, and all other rights, interests or benefits in and to the  
23 waters described in NRS 538.041 to 538.251, inclusive, and to the  
24 power generated thereon, held by or which may accrue to the State  
25 of Nevada under and by virtue of any Act of the Congress of the  
26 United States or any agreements, compacts or treaties to which the  
27 State of Nevada may become a party, or otherwise.

28 2. Except as otherwise provided in this subsection, applications  
29 for the original appropriation of such waters, or to change the place  
30 of diversion, manner of use or place of use of water covered by the  
31 original appropriation, must be made to the Commission in  
32 accordance with the regulations of the Commission. In considering  
33 such an application, the Commission shall use the criteria set forth  
34 in subsection ~~3~~ 4 of NRS 533.370. The Commission's action on  
35 the application constitutes the recommendation of the State of  
36 Nevada to the United States for the purposes of any federal action  
37 on the matter required by law. The provisions of this subsection do  
38 not apply to supplemental water.

39 3. The Commission shall furnish to the State Engineer a copy  
40 of all agreements entered into by the Commission concerning the  
41 original appropriation and use of such waters. It shall also furnish to  
42 the State Engineer any other information it possesses relating to the  
43 use of water from the Colorado River which the State Engineer  
44 deems necessary to allow him to act on applications for permits for



1 the subsequent appropriation of these waters after they fall within  
2 the State Engineer's jurisdiction.

3 4. Notwithstanding any provision of chapter 533 of NRS, any  
4 original appropriation and use of the waters described in subsection  
5 1 by the Commission or by any entity to whom or with whom the  
6 Commission has contracted the water is not subject to regulation by  
7 the State Engineer.

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

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

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

- 21 (a) That the water right has been quantified as required by  
22 subsection 1; and  
23 (b) Of the amount of water that the State Engineer has  
24 determined was beneficially used for the purpose set forth in the  
25 certificate of appropriation.

26 3. The State Engineer shall file a notice with the office of the  
27 county recorder of the county in which water is appropriated  
28 pursuant to a certificate of appropriation described in subsection 1.  
29 The notice must contain the information required to be included in  
30 the notice given to the owner of the water right pursuant to  
31 subsection 2.

32 **Sec. 6.** The amendatory provisions of section 2 of this act  
33 apply to:

- 34 1. Each application described in NRS 533.370 that is made on  
35 or after July 1, 2003; and  
36 2. Each such application that is pending with the office of the  
37 State Engineer on July 1, 2003.

38 **Sec. 7.** 1. This act becomes effective on July 1, 2003.  
39 2. Section 5 of this act expires by limitation on June 30, 2005.

