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SECOND REPRINT

A.B. 30

ASSEMBLY BILL NO. 30—COMMITTEE ON NATURAL
RESOURCES, AGRICULTURE, AND MINING

(ON BEHALF OF THE DIVISION OF WATER RESOURCES
OF THE STATE DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES)

PREFILED NOVEMBER 16, 2018

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions governing water. (BDR 48-214)

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.

AN ACT relating to water; authorizing the State Engineer to require certain applicants to submit a monitoring, management and mitigation plan; authorizing the State Engineer, under certain circumstances, to consider such a plan before approving or denying an application for a permit; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires the State Engineer to reject an application for a permit to
2 appropriate water to beneficial use if there is no unappropriated water at the source
3 of supply or if the proposed use or change of use of the water conflicts with
4 existing rights or protectable interests in existing domestic wells or threatens to
5 prove detrimental to the public interest. (NRS 533.370) **Section 1** of this bill
6 authorizes, under certain circumstances, the State Engineer to require an applicant
7 for a permit to submit a monitoring, management and mitigation plan. **Section 1**
8 also requires the State Engineer to give certain notice and have a public hearing on
9 such a plan before determining whether to approve or deny an application for a
10 permit. **Sections 2-9** of this bill make conforming changes.



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

1 **Section 1.** Chapter 533 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *Except as otherwise provided in subsections 2 and 3, the*
4 *State Engineer may require any person who submits an*
5 *application to submit a monitoring, management and mitigation*
6 *plan.*

7 2. *If there is water available for appropriation in the*
8 *proposed source of supply in the amount of water set forth in an*
9 *application, before rejecting an application because the proposed*
10 *use or change set forth in the application may conflict with*
11 *existing rights or protectable interests in domestic wells as set*
12 *forth in NRS 533.024, the State Engineer may require the*
13 *applicant to make a reasonable effort to avoid the potential*
14 *conflict, including, without limitation:*

15 (a) *Configuring the point or points of diversion and diversion*
16 *rates to avoid any potential conflict;*

17 (b) *Reduce the size of the project or improve water efficiency*
18 *to avoid any potential conflict; and*

19 (c) *Work cooperatively with holders of existing rights and*
20 *owners of domestic wells to enter into a mutual agreement that*
21 *avoids any potential conflict.*

22 ↳ *The applicant must submit to the State Engineer documentation*
23 *of the efforts to meet the requirements of this subsection.*

24 3. *If the State Engineer finds that the applicant has*
25 *demonstrated that the reasonable efforts made pursuant to*
26 *subsection 2:*

27 (a) *Avoid any potential conflict, the State Engineer may,*
28 *subject to the provisions of NRS 533.370, approve the application.*

29 (b) *Did not avoid any potential conflict, the State Engineer*
30 *may require the applicant to submit a monitoring, management*
31 *and mitigation plan.*

32 4. *The State Engineer shall:*

33 (a) *Hold a public hearing on every proposed monitoring,*
34 *management and mitigation plan; and*

35 (b) *Before holding the public hearing required pursuant to*
36 *paragraph (a), cause notice of the monitoring, management and*
37 *mitigation plan to be:*

38 (1) *Published once a week for 4 consecutive weeks in a*
39 *newspaper of general circulation in the county where the point of*
40 *diversion is located. The notice must include, without limitation,*
41 *the date of the public hearing required pursuant to paragraph (a).*



1 *Proof of publication must be filed within 30 days after the final*
2 *day of publication.*

3 *(2) If the application is for a proposed well described in*
4 *subsection 3 of NRS 533.360, mailed to each owner of real*
5 *property containing a domestic well that is within 2,500 feet of the*
6 *proposed well, to the owner's address as shown in the latest*
7 *records of the county assessor. If there are not more than six such*
8 *wells, notices must be sent to each owner by certified mail, return*
9 *receipt requested. If there are more than six such wells, at least six*
10 *notices must be sent to owners by certified mail, return receipt*
11 *requested. The return receipts from these notices must be filed*
12 *with the State Engineer before the State Engineer may hold the*
13 *public hearing on the plan pursuant to paragraph (a).*

14 *5. If the State Engineer determines after the public hearing*
15 *required pursuant to subsection 4 that the applicant has*
16 *demonstrated that any potential conflict will be avoided pursuant*
17 *to the monitoring, management and mitigation plan, the State*
18 *Engineer may, subject to the provisions of NRS 533.370, approve*
19 *the application on the condition that before the applicant*
20 *appropriates water for beneficial use or changes the place of*
21 *diversion, manner of use or place of use of water already*
22 *appropriated:*

23 *(a) Every measure or action in the monitoring, management*
24 *and mitigation plan is taken; and*

25 *(b) The potential conflicts are avoided.*

26 *6. If the State Engineer determines after the public hearing*
27 *required pursuant to subsection 4 that the applicant has not*
28 *demonstrated that the potential conflicts will be avoided pursuant*
29 *to the monitoring, management and mitigation plan, the State*
30 *Engineer shall reject the application pursuant to NRS 533.370.*

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

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

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

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

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

43 (1) Intention in good faith to construct any work necessary to
44 apply the water to the intended beneficial use with reasonable
45 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 ~~6~~ and
5 *section 1 of this act*, where there is no unappropriated water in the
6 proposed source of supply, or where its proposed use or change
7 conflicts with existing rights or with protectable interests in existing
8 domestic wells as set forth in NRS 533.024, or threatens to prove
9 detrimental to the public interest, the State Engineer shall reject the
10 application and refuse to issue the requested permit. If a previous
11 application for a similar use of water within the same basin has been
12 rejected on those grounds, the new application may be denied
13 without publication.

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

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

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

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

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

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

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

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

36 (b) If an application is protested.

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

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

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

44 (f) In areas in which adjudication of vested water rights is
45 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. As used in this section, "domestic well" has the meaning
20 ascribed to it in NRS 534.350.

21 **Sec. 3.** NRS 533.371 is hereby amended to read as follows:

22 533.371 The State Engineer shall reject the application and
23 refuse to issue a permit to appropriate water for a specified period if
24 the State Engineer determines that:

- 25 1. The application is incomplete;
- 26 2. The prescribed fees have not been paid;
- 27 3. The proposed use is not temporary;
- 28 4. There is no water available from the proposed source of
29 supply without exceeding the perennial yield or safe yield of that
30 source;
- 31 5. ~~The~~ *Except as otherwise provided in section 1 of this act,*
32 *the* proposed use conflicts with existing rights; or
- 33 6. The proposed use threatens to prove detrimental to the
34 public interest.

35 **Sec. 4.** NRS 533.450 is hereby amended to read as follows:

36 533.450 1. Except as otherwise provided in NRS 533.353,
37 any person feeling aggrieved by any order or decision of the State
38 Engineer, acting in person or through the assistants of the State
39 Engineer or the water commissioner, affecting the person's interests,
40 when the order or decision relates to the administration of
41 determined rights or is made pursuant to NRS 533.270 to 533.445,
42 inclusive, *and section 1 of this act*, or NRS 533.481, 534.193,
43 535.200 or 536.200, may have the same reviewed by a proceeding
44 for that purpose, insofar as may be in the nature of an appeal, which
45 must be initiated in the proper court of the county in which the



1 matters affected or a portion thereof are situated, but on stream
2 systems where a decree of court has been entered, the action must be
3 initiated in the court that entered the decree. The order or decision of
4 the State Engineer remains in full force and effect unless
5 proceedings to review the same are commenced in the proper court
6 within 30 days after the rendition of the order or decision in
7 question and notice thereof is given to the State Engineer as
8 provided in subsection 3.

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

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

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

31 5. An order or decision of the State Engineer must not be
32 stayed unless the petitioner files a written motion for a stay with the
33 court and serves the motion personally or by registered or certified
34 mail upon the State Engineer, the applicant or other real party in
35 interest and each party of record within 10 days after the petitioner
36 files the petition for judicial review. Any party may oppose the
37 motion and the petitioner may reply to any such opposition. In
38 determining whether to grant or deny the motion for a stay, the court
39 shall consider:

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

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

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



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

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

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

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

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

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

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

27 **Sec. 5.** NRS 533.475 is hereby amended to read as follows:

28 533.475 The State Engineer and the assistants of the State
29 Engineer shall have power to arrest any person violating any of the
30 provisions of NRS 533.005 to 533.470, inclusive, *and section 1 of*
31 *this act* and to turn that person over to the sheriff or other competent
32 police officer within the county. Immediately on delivering any such
33 person so arrested into the custody of the sheriff, the State Engineer
34 or assistant making such arrest shall immediately, in writing, and
35 upon oath, make a complaint before the justice of the peace against
36 the person so arrested.

37 **Sec. 6.** NRS 533.480 is hereby amended to read as follows:

38 533.480 Any person violating any of the provisions of NRS
39 533.005 to 533.475, inclusive, *and section 1 of this act* shall be
40 guilty of a misdemeanor.

41 **Sec. 7.** NRS 533.515 is hereby amended to read as follows:

42 533.515 1. No permit for the appropriation of water or
43 application to change the point of diversion, manner of use or place
44 of use under an existing water right may be denied because of the
45 fact that the point of diversion described in the application for the



1 permit, or any portion of the works in the application described and
2 to be constructed for the purpose of storing, conserving, diverting or
3 distributing the water are situated in any other state; but in all such
4 cases where the place of intended use, or the lands, or part of the
5 lands identified as the place of use, are situated within this state, the
6 permit must be issued as in other cases, pursuant to the provisions of
7 NRS 533.324 to 533.450, inclusive, *and section 1 of this act*, and
8 chapter 534 of NRS.

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

13 **Sec. 8.** NRS 533.520 is hereby amended to read as follows:

14 533.520 1. Any person who files an application for a permit
15 to appropriate water from above or beneath the surface of the
16 ground for use outside this State, or to change the point of diversion
17 under an existing water right which has a place of use outside of this
18 State, or to change the place of use of water from a location in this
19 State to a location outside this State under an existing right, must
20 file an application with the State Engineer for a permit to do so
21 pursuant to provisions of NRS 533.324 to 533.450, inclusive, *and*
22 *section 1 of this act*, and chapter 534 of NRS.

23 2. The State Engineer may approve such an application if the
24 State Engineer determines that the applicant's use of the water
25 outside this State complies with the requirements of NRS 533.324 to
26 533.450, inclusive, *and section 1 of this act* and those provisions of
27 chapter 534 of NRS pertaining to the appropriation of water. In
28 making the determination, the State Engineer shall consider:

29 (a) The supply of water available in this State;

30 (b) The current and reasonably anticipated demands for water in
31 this State;

32 (c) The current or reasonably anticipated shortages of water in
33 this State;

34 (d) Whether the water that is the subject of the application could
35 feasibly be used to alleviate current or reasonably anticipated
36 shortages of water in this State;

37 (e) The supply and sources of water available to the applicant in
38 the state in which the applicant intends to use the water;

39 (f) The demands placed on the applicant's supply of water in the
40 state in which he or she intends to use the water; and

41 (g) Whether the request in the application is reasonable, taking
42 into consideration the factors set forth in paragraphs (a) to (f),
43 inclusive.

44 3. The State Engineer may, as a condition to the approval of
45 such an application, require the applicant to file a certificate from



1 the appropriate official in the state in which the water is to be used,
2 indicating to the satisfaction of the State Engineer that the intended
3 use of the water would be beneficial and that the appropriation is
4 feasible.

5 4. A person who is granted a permit pursuant to this section
6 shall comply with the laws and regulations of this State governing
7 the appropriation and use of water, as amended from time to time,
8 and any change in the point of diversion, manner of use or place of
9 use of water under a permit issued pursuant to this section is subject
10 to the requirements of this section.

11 5. The State Engineer may, as a condition of the approval of
12 any permit granted pursuant to this section, require that the use of
13 water in another state be subject to the same regulations and
14 restrictions that may be imposed upon the use of water in this State.

15 6. Upon submittal of an application under this section, the
16 applicant and, if the applicant is a natural person, the personal
17 representative of the person, are subject to the jurisdiction of the
18 courts of this State and to service of process as provided in
19 NRS 14.065.

20 **Sec. 9.** NRS 534.110 is hereby amended to read as follows:

21 534.110 1. The State Engineer shall administer this chapter
22 and shall prescribe all necessary regulations within the terms of this
23 chapter for its administration.

24 2. The State Engineer may:

25 (a) Require periodical statements of water elevations, water
26 used, and acreage on which water was used from all holders of
27 permits and claimants of vested rights.

28 (b) Upon his or her own initiation, conduct pumping tests to
29 determine if overpumping is indicated, to determine the specific
30 yield of the aquifers and to determine permeability characteristics.

31 3. The State Engineer shall determine whether there is
32 unappropriated water in the area affected and may issue permits
33 only if the determination is affirmative. The State Engineer may
34 require each applicant to whom a permit is issued for a well:

35 (a) For municipal, quasi-municipal or industrial use; and

36 (b) Whose reasonably expected rate of diversion is one-half
37 cubic foot per second or more,

38 ↪ to report periodically to the State Engineer concerning the effect
39 of that well on other previously existing wells that are located within
40 2,500 feet of the well.

41 4. It is a condition of each appropriation of groundwater
42 acquired under this chapter that the right of the appropriator relates
43 to a specific quantity of water and that the right must allow for a
44 reasonable lowering of the static water level at the appropriator's
45 point of diversion. In determining a reasonable lowering of the static



1 water level in a particular area, the State Engineer shall consider the
2 economics of pumping water for the general type of crops growing
3 and may also consider the effect of using water on the economy of
4 the area in general.

5 5. This section does not prevent the granting of permits to
6 applicants later in time on the ground that the diversions under the
7 proposed later appropriations may cause the water level to be
8 lowered at the point of diversion of a prior appropriator, so long as
9 any protectable interests in existing domestic wells as set forth in
10 NRS 533.024 and the rights of holders of existing appropriations
11 can be satisfied under such express conditions ~~[]~~ ***or a monitoring,
12 management and mitigation plan to avoid any potential conflict is
13 required by the State Engineer pursuant to section 1 of this act.*** At
14 the time a permit is granted for a well:

15 (a) For municipal, quasi-municipal or industrial use; and

16 (b) Whose reasonably expected rate of diversion is one-half
17 cubic foot per second or more,

18 ➤ the State Engineer shall include as a condition of the permit that
19 pumping water pursuant to the permit may be limited or prohibited
20 to prevent any unreasonable adverse effects on an existing domestic
21 well located within 2,500 feet of the well, unless the holder of the
22 permit and the owner of the domestic well have agreed to alternative
23 measures that mitigate those adverse effects.

24 6. Except as otherwise provided in subsection 7, the State
25 Engineer shall conduct investigations in any basin or portion thereof
26 where it appears that the average annual replenishment to the
27 groundwater supply may not be adequate for the needs of all
28 permittees and all vested-right claimants, and if the findings of the
29 State Engineer so indicate, the State Engineer may order that
30 withdrawals, including, without limitation, withdrawals from
31 domestic wells, be restricted to conform to priority rights.

32 7. The State Engineer:

33 (a) May designate as a critical management area any basin in
34 which withdrawals of groundwater consistently exceed the perennial
35 yield of the basin.

36 (b) Shall designate as a critical management area any basin in
37 which withdrawals of groundwater consistently exceed the perennial
38 yield of the basin upon receipt of a petition for such a designation
39 which is signed by a majority of the holders of certificates or
40 permits to appropriate water in the basin that are on file in the Office
41 of the State Engineer.

42 ➤ The designation of a basin as a critical management area pursuant
43 to this subsection may be appealed pursuant to NRS 533.450. If a
44 basin has been designated as a critical management area for at least
45 10 consecutive years, the State Engineer shall order that



1 withdrawals, including, without limitation, withdrawals from
2 domestic wells, be restricted in that basin to conform to priority
3 rights, unless a groundwater management plan has been approved
4 for the basin pursuant to NRS 534.037.

5 8. In any basin or portion thereof in the State designated by the
6 State Engineer, the State Engineer may restrict drilling of wells in
7 any portion thereof if the State Engineer determines that additional
8 wells would cause an undue interference with existing wells. Any
9 order or decision of the State Engineer so restricting drilling of such
10 wells may be reviewed by the district court of the county pursuant to
11 NRS 533.450.

12 **Sec. 10.** This act becomes effective upon passage and
13 approval.

⑩

