

ASSEMBLY BILL NO. 5—COMMITTEE ON NATURAL RESOURCES

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

PREFILED NOVEMBER 18, 2020

Referred to Committee on Natural Resources

SUMMARY—Makes various changes to provisions relating to
judicial review of orders and decisions of the State
Engineer. (BDR 48-311)

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; revising provisions relating to the
judicial review of an order or decision of the State
Engineer; and providing other matters properly relating
thereto.

Legislative Counsel’s Digest:

1 Existing law provides that any person feeling aggrieved by an order or decision
2 of the State Engineer that affects the person’s interests may have the order or
3 decision reviewed by a court. The review is conducted as an informal summary
4 review in the nature of an appeal. (NRS 533.450) This bill limits the circumstances
5 in which such an aggrieved person may have a determination of the State Engineer
6 reviewed by a court to require that the determination: (1) be a formal order, ruling
7 or decision that is a final determination issued in writing; and (2) materially affect
8 the person’s interests. This bill also clarifies that the practice in civil appellate cases
9 applies to the judicial review of an order, ruling or decision of the State Engineer.

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

1 **Section 1.** NRS 533.450 is hereby amended to read as follows:
2 533.450 1. Except as otherwise provided in NRS 533.353,
3 any person feeling aggrieved by any *formal* order , *ruling* or
4 decision ~~that~~ *that is a final determination issued in writing* by the



1 State Engineer, acting in person or through the assistants of the State
2 Engineer or the water commissioner, ~~affecting~~ *which materially*
3 *affects* the person's interests, when the order , *ruling* or decision
4 relates to the administration of determined rights or is made
5 pursuant to NRS 533.270 to 533.445, inclusive, or NRS 533.481,
6 534.193, 535.200 or 536.200, may have the ~~same~~ *order, ruling or*
7 *decision* reviewed by a proceeding for that purpose, insofar as may
8 be in the nature of an appeal, which must be initiated in the proper
9 court of the county in which the matters affected or a portion thereof
10 are situated, but on stream systems where a decree of court has been
11 entered, the action must be initiated in the court that entered the
12 decree. The order , *ruling* or decision of the State Engineer remains
13 in full force and effect unless proceedings ~~to review the same~~ are
14 commenced in the proper court within 30 days after the rendition of
15 the order , *ruling* or decision in question and notice ~~thereof~~ *of the*
16 *proceedings* is given to the State Engineer as provided in
17 subsection 3.

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

21 3. No such proceedings may be entertained unless notice
22 ~~thereof,~~ *of the proceedings*, containing a statement of the
23 substance of the order , *ruling* or decision complained of, and of the
24 manner in which the same injuriously affects the petitioner's
25 interests, has been served upon the State Engineer, personally or by
26 registered or certified mail, at the Office of the State Engineer at the
27 State Capital within 30 days following the rendition of the order ,
28 *ruling* or decision in question. A similar notice must also be served
29 personally or by registered or certified mail upon the person who
30 may have been affected by the order , *ruling* or decision.

31 4. Where evidence has been filed with, or testimony taken
32 before, the State Engineer, a transcribed copy thereof, or of any
33 specific part of the same, duly certified as a true and correct
34 transcript in the manner provided by law, must be received in
35 evidence with the same effect as if the reporter were present and
36 testified to the facts so certified. A copy of the transcript must be
37 furnished on demand, at actual cost, to any person affected by the
38 order , *ruling* or decision, and to all other persons on payment of a
39 reasonable amount therefor, to be fixed by the State Engineer.

40 5. An order , *ruling* or decision of the State Engineer must not
41 be stayed unless the petitioner files a written motion for a stay with
42 the court and serves the motion personally or by registered or
43 certified mail upon the State Engineer, the applicant or other real
44 party in interest and each party of record within 10 days after the
45 petitioner files the petition for judicial review. Any party may



1 oppose the motion and the petitioner may reply to any such
2 opposition. In determining whether to grant or deny the motion for a
3 stay, the court shall consider:

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

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

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

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

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

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

21 8. The practice in civil *appellate* cases applies to the informal
22 and summary character of such proceedings, as provided in this
23 section.

24 9. Appeals may be taken to the appellate court of competent
25 jurisdiction pursuant to the rules fixed by the Supreme Court
26 pursuant to Section 4 of Article 6 of the Nevada Constitution from
27 the judgment of the district court in the same manner as in other
28 civil cases.

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

31 11. Whenever it appears to the State Engineer that any
32 litigation, whether now pending or hereafter brought, may adversely
33 affect the rights of the public in water, the State Engineer shall
34 request the Attorney General to appear and protect the interests of
35 the State.

36 **Sec. 2.** This act becomes effective upon passage and approval.



