

ASSEMBLY BILL NO. 380—COMMITTEE ON NATURAL RESOURCES, AGRICULTURE
AND MINING

MARCH 3, 1999

Referred to Committee on Natural Resources, Agriculture and Mining

SUMMARY—Revises provisions governing priority, forfeiture and adjudication of water rights.
(BDR 48-971)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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 the provisions establishing the priority of certain water rights; providing that certain evidence may be considered to show whether water has been beneficially used; clarifying the circumstances under which water becomes appurtenant to land; providing that certain surface water rights are not subject to forfeiture for failure to use water pursuant to that right within a certain period; requiring a district court to decide protests of applications to appropriate water; 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.** Chapter 533 of NRS is hereby amended by adding thereto
2 a new section to read as follows:
3 ***1. Except as otherwise provided in subsections 2 and 3 and NRS***
4 ***533.492, the priority of a water right is determined according to the date***
5 ***on which the holder of the right or, if the right was obtained from a***
6 ***previous holder of the right, the previous holder, first:***
7 ***(a) Appropriates the water;***
8 ***(b) Obtains the right by decree; or***
9 ***(c) Is issued a certificate for the right,***
10 ***whichever is earlier.***
11 ***2. Except as otherwise provided in subsection 3, if the previous***
12 ***holder of the water right was the United States, the priority of the water***
13 ***right is determined according to the date on which the United States first***
14 ***appropriated or otherwise acquired the water right. If the water right***

1 vested under the law in this state before appropriation or acquisition by
2 the United States, the priority of the water right is determined according
3 to the date on which the water right vested.

4 3. The priority of a water right granted to a person by the United
5 States for use in a federal reclamation project is determined according to
6 the date on which the United States appropriates all of the water for
7 initiation of the project, unless the water right vested under the law in
8 this state at the time the United States first appropriated or otherwise
9 acquired the water right. If the water right vested under the law in this
10 state before appropriation or acquisition by the United States, the priority
11 of the water right is determined according to the date on which the water
12 right vested.

13 Sec. 2. NRS 533.035 is hereby amended to read as follows:

14 533.035 1. Beneficial use ~~{shall be}~~ is the basis, the measure and the
15 limit of the right to the use of water.

16 2. Evidence including, but not limited to, the following may be
17 considered to show that water has been applied to beneficial use:

18 (a) Records of:

19 (1) The delivery of the water;

20 (2) The payment of any costs of maintenance and other operational
21 costs incurred in delivering the water; and

22 (3) The payment of any costs for capital improvements, including
23 works of diversion and irrigation;

24 (b) Data regarding production of crops;

25 (c) Contracts for the construction or maintenance of works of
26 diversion and irrigation; and

27 (d) Testimony of witnesses concerning the beneficial use of the water.

28 Sec. 3. NRS 533.040 is hereby amended to read as follows:

29 533.040 ~~{All}~~

30 1. Except as otherwise provided in this section, any water used in this
31 state for beneficial purposes shall *be deemed to* remain appurtenant to the
32 place of use . ~~{; provided:~~

33 ~~—1. That if for any reason it should}~~

34 2. If at any time ~~{become}~~ *it is* impracticable to use water beneficially
35 or economically at the place to which it is appurtenant, the right may be
36 severed from ~~{such}~~ *the* place of use and *be* simultaneously transferred and
37 become appurtenant to ~~{other place or places}~~ *another place* of use, in the
38 manner provided in this chapter, ~~{and not otherwise,}~~ without losing
39 priority of right . ~~{heretofore established; and}~~

40 ~~—2. That the}~~

41 3. The provisions of this section ~~{shall}~~ *do* not apply ~~{in cases of}~~ *to a*
42 ditch or canal ~~{companies which have appropriated}~~ *company that*

1 *appropriates* water for diversion and transmission to the lands of private
2 persons ~~at~~ *for* an annual charge.

3 *4. For the purposes of this section, water is appurtenant to the place*
4 *of use if:*

5 *(a) The water is appropriated for use on a contiguous area of land,*
6 *regardless of whether the water is used only on part of that area; and*

7 *(b) The total amount of water used on that area:*

8 *(1) Does not exceed the total amount of water that has been*
9 *appropriated or obtained by decree or for which a certificate has been*
10 *issued; and*

11 *(2) Is limited to that amount which is applied to beneficial use.*

12 **Sec. 4.** NRS 533.060 is hereby amended to read as follows:

13 533.060 1. Rights to the use of water ~~shall~~ *must* be limited and
14 restricted to ~~so much thereof~~ *as much* as may be necessary, when
15 reasonably and economically used for irrigation and other beneficial
16 purposes, irrespective of the carrying capacity of the ditch. ~~All the~~ *The*
17 balance of the water not so appropriated ~~shall~~ *must* be allowed to flow in
18 the natural stream from which ~~such~~ *the* ditch draws its supply of water,
19 and ~~shall~~ *must* not be considered as having been appropriated thereby.

20 2. Except as otherwise provided in ~~subsection 4,~~ *subsections 4 and*
21 *5,* if the owner ~~for owners of any such~~ *of a* ditch, canal, reservoir ~~or~~
22 ~~any~~ *or* other means of diverting any of the public water ~~fail~~ *fails* to use
23 the water therefrom ~~for thereby~~ for beneficial purposes for which the right
24 of use exists during any 5 successive years, the ~~right to so use shall be~~
25 ~~deemed as having been abandoned, and any such owner or owners~~
26 ~~thereupon forfeit~~ *owner forfeits* all water rights, easements and privileges
27 appurtenant thereto theretofore acquired, and all the water so formerly
28 appropriated by ~~such owner or owners and their predecessors in interest~~
29 *the owner* may be again appropriated for beneficial use ~~the same as if~~
30 ~~such ditch, canal, reservoir or other means of diversion had never been~~
31 ~~constructed, and~~ *by* any qualified person . ~~may appropriate any such~~
32 ~~water for beneficial use.~~

33 ~~—3.—No~~

34 *3. A* prescriptive right to the use of ~~such~~ *the* water or any of the
35 public water appropriated or unappropriated ~~can~~ *may not* be acquired by
36 ~~adverse user or~~ adverse possession . ~~for any period of time whatsoever,~~
37 ~~but any~~ *Any* such right to appropriate any of ~~such water shall~~ *the water*
38 *must* be initiated by ~~first making application~~ *applying* to the state
39 engineer for a permit to appropriate the ~~same~~ *water* as provided in this
40 chapter . ~~and not otherwise.~~

41 *4.* The State of Nevada reserves for its own present and future use all
42 rights to the use and diversion of water acquired pursuant to chapter 462,
43 Statutes of Nevada 1963, or otherwise existing within the watersheds of

1 Marlette Lake, Franktown Creek and Hobart Creek and not lawfully
2 appropriated on April 26, 1963, by any person other than the Marlette
3 Lake Company. ~~No such right may~~ **Such a right must not** be
4 appropriated by any person without the express consent of the legislature.

5 **5. The provisions of subsection 2 do not apply to a surface water**
6 **right that is established by a decree or other adjudication of a court.**

7 **Sec. 5.** NRS 533.365 is hereby amended to read as follows:

8 533.365 1. Any person interested may, within 30 days ~~from~~ **after**
9 the date of **the** last publication of the notice of application, file with the
10 ~~state engineer~~ **district court of the county in which the water is proposed**
11 **to be appropriated** a written protest against the granting of the application .
12 ~~setting~~ **The protest must set** forth with reasonable certainty the grounds
13 ~~of such protest, which shall~~ **for the protest and must** be verified by the
14 affidavit of the protestant, his agent or attorney. **At the time the protest is**
15 **filed, a copy of the protest must be served upon the applicant by certified**
16 **mail.**

17 2. On receipt of a protest, the ~~state engineer shall advise the applicant~~
18 ~~whose application has been protested of the fact that the protest has been~~
19 ~~filed with him, which advice shall be sent by certified mail.~~

20 ~~3. The state engineer shall consider the protest, and may, in his~~
21 ~~discretion, hold hearings and require the filing of such evidence as he may~~
22 ~~deem necessary to a full understanding of the rights involved. The state~~
23 ~~engineer shall give notice of the hearing by certified mail to both the~~
24 ~~applicant and the protestant. The notice must state the time and place at~~
25 ~~which the hearing is to be held and must be mailed at least 15 days before~~
26 ~~the date set for the hearing.~~

27 ~~4. The state engineer shall adopt rules of practice regarding the~~
28 ~~conduct of such hearings. The rules of practice must be adopted in~~
29 ~~accordance with the provisions of NRS 233B.040 to 233B.120, inclusive,~~
30 ~~and codified in the Nevada Administrative Code. The technical rules of~~
31 ~~evidence do not apply at such a hearing.]~~ **district court shall schedule a**
32 **hearing to determine the respective rights of the applicant and the**
33 **protestant.**

34 **3. The Nevada Rules of Civil Procedure apply to any hearing**
35 **conducted pursuant to this section. After the protest is filed and a copy of**
36 **the protest is served upon the applicant, a party may invoke any method**
37 **of discovery that is available under those rules if, and to the extent that,**
38 **the judge for good cause shown grants leave to invoke that method of**
39 **discovery. A request for discovery that is available under those rules must**
40 **be accompanied by a statement of the interrogatories or requests for**
41 **admission and a list of any documents sought to be produced. If the**
42 **protestant alleges that any water right at issue has been perfected,**
43 **forfeited or abandoned, the protestant bears the burden of proving the**

1 *existence of the perfection, forfeiture or abandonment of the water right*
2 *by a preponderance of the evidence.*

3 *4. After considering any evidence presented at the hearing, the*
4 *district court shall enter an order declaring the respective rights of the*
5 *parties.*

6 **Sec. 6.** NRS 533.370 is hereby amended to read as follows:

7 533.370 1. Except as otherwise provided in NRS 533.345, 533.371,
8 533.372 and 533.503 and this section, the state engineer shall approve an
9 application submitted in proper form which contemplates the application of
10 water to beneficial use if:

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

12 (b) The proposed use or change, if within an irrigation district, does not
13 adversely affect the cost of water for other holders of water rights in the
14 district or lessen the ~~{district's}~~ efficiency *of the district* in its delivery or
15 use of water; and

16 (c) The applicant provides proof satisfactory to the state engineer of:

17 (1) His intention in good faith to construct any work necessary to
18 apply the water to the intended beneficial use with reasonable diligence;
19 and

20 (2) His financial ability and reasonable expectation actually to
21 construct the work and apply the water to the intended beneficial use with
22 reasonable diligence.

23 2. Except as otherwise provided in subsection 5, the state engineer
24 shall ~~{either}~~ approve or reject each application within 1 year after the final
25 date for filing *a* protest. However:

26 (a) Action ~~{can}~~ *may* be postponed by the state engineer upon written
27 authorization to do so by the applicant or, ~~{in case of a protested~~
28 ~~application, by both the protestant and the applicant;}~~ *if the application is*
29 *protested pursuant to NRS 533.365, until the decision of the district court*
30 *in that proceeding becomes final;* and

31 (b) In areas where studies of water supplies are being made or where
32 court actions are pending, the state engineer may withhold action until it is
33 determined there is unappropriated water or the court action becomes final.

34 3. Except as otherwise provided in subsection 5, ~~{where}~~ *if* there is no
35 unappropriated water in the proposed source of supply, or ~~{where its}~~ *if the*
36 proposed use or change *set forth in the application* conflicts with existing
37 rights ~~{}~~ or threatens to prove detrimental to the public interest, the state
38 engineer shall reject the application and refuse to issue the requested
39 permit. ~~{Where}~~ *If* a previous application for a similar use of water within
40 the same basin has been rejected on ~~{these}~~ *those* grounds, the new
41 application may be denied without publication.

42 4. If a hearing is held regarding an application, the decision of the state
43 engineer must be in writing and include findings of fact, conclusions of

1 law and a statement of the underlying facts supporting the findings of fact.
2 The written decision may take the form of a transcription of an oral ruling.
3 The rejection or approval of an application must be endorsed on a copy of
4 the original application, and a record made of the endorsement in the
5 records of the state engineer. The copy of the application so endorsed must
6 be returned to the applicant. Except as otherwise provided in subsection 6,
7 if the application is approved, the applicant may, on receipt thereof,
8 proceed with the construction of the necessary works and take ~~all~~ **any**
9 steps required to apply the water to beneficial use and to perfect the
10 proposed appropriation. If the application is rejected , the applicant may
11 **not** take ~~no~~ **any** steps toward the prosecution of the proposed work or the
12 diversion and use of the public water ~~so~~ **as** long as the rejection continues
13 in force.

14 5. The provisions of subsections 1, 2 and 3 do not apply to an
15 application for an environmental permit.

16 6. The provisions of subsection 4 do not authorize the recipient of an
17 approved application to use any state land administered by the division of
18 state lands of the state department of conservation and natural resources
19 without the appropriate authorization for ~~such a~~ **that** use from the state
20 land registrar.

21 **Sec. 7.** NRS 533.435 is hereby amended to read as follows:

22 533.435 1. The state engineer shall collect the following fees:

23
24 For examining and filing an application for a permit
25 to appropriate water.....\$250.00

26 This fee includes the cost of publication, which
27 is \$50.

28 For examining and acting upon plans and
29 specifications for construction of a dam500.00

30 For examining and filing an application for each
31 permit to change the point of diversion, manner of
32 use or place of use of an existing right..... 150.00

33 This fee includes the cost of the publication of
34 the application, which is \$50.

35 For issuing and recording each permit to appropriate
36 water for any purpose, except for generating
37 hydroelectric power which results in
38 nonconsumptive use of the water or watering
39 livestock or wildlife purposes 150.00

40 plus \$2 per acre-foot approved or fraction
41 thereof.

1	For issuing and recording each permit to change an	
2	existing right whether temporary or permanent for	
3	any purpose, except for generating hydroelectric	
4	power which results in nonconsumptive use of the	
5	water, for watering livestock or wildlife purposes	
6	which change the point of diversion or place of	
7	use only, or for irrigational purposes which	
8	change the point of diversion or place of use only	\$100.00
9	plus \$2 per acre-foot approved or fraction	
10	thereof.	
11	For issuing and recording each permit to change the	
12	point of diversion or place of use only of an	
13	existing right whether temporary or permanent for	
14	irrigational purposes	200.00
15	For issuing and recording each permit to appropriate	
16	or change the point of diversion or place of use of	
17	an existing right only whether temporary or	
18	permanent for watering livestock or wildlife	
19	purposes for each second-foot of water approved	
20	or fraction thereof	50.00
21	For issuing and recording each permit to appropriate	
22	or change an existing right whether temporary or	
23	permanent for water for generating hydroelectric	
24	power which results in nonconsumptive use of the	
25	water for each second-foot of water approved or	
26	fraction thereof	100.00
27	This fee must not exceed \$1,000.	
28	For filing a secondary application under a reservoir	
29	permit	200.00
30	For approving and recording a secondary permit	
31	under a reservoir permit	200.00
32	For reviewing each tentative subdivision map	150.00
33	plus \$1 per lot.	
34	For storage approved under a dam permit for	
35	privately owned nonagricultural dams which store	
36	more than 50 acre-feet	100.00
37	plus \$1 per acre-foot storage capacity. This fee	
38	includes the cost of inspection and must be	
39	paid annually.	
40	For filing proof of completion of work	10.00
41	For filing proof of beneficial use	50.00
42	For filing any protest <i>pursuant to NRS 534.270</i>	25.00

1 For filing any application for **an** extension of time
2 within which to file proofs\$100.00
3 For examining and filing a report of conveyance
4 filed pursuant to paragraph (a) of subsection 1 of
5 NRS 533.38425.00
6 plus \$10 per conveyance document
7 For filing any other instrument.....1.00
8 For making **a** copy of any document recorded or
9 filed in his office, for the first page.....1.00
10 For each additional page20
11 For certifying to copies of documents, records or
12 maps, for each certificate1.00
13 For each blueprint copy of any drawing or map, per
14 square foot50
15 The minimum charge for a blueprint copy, per print3.00

16
17 2. ~~When~~ **If any** fees are not specified in subsection 1 for work
18 required of his office, the state engineer shall collect the actual cost of the
19 work.

20 3. Except as otherwise provided in this subsection, all fees collected by
21 the state engineer under the provisions of this section must be deposited in
22 the state treasury for credit to the **state** general fund. All fees received for
23 blueprint copies of any drawing or map must be kept by him and used only
24 to pay the costs of printing, replacement and maintenance of printing
25 equipment. Any publication fees received which are not used by him for
26 publication expenses must be returned to the persons who paid the fees. If,
27 after exercising due diligence, the state engineer is unable to make the
28 refunds, he shall deposit the fees in the state treasury for credit to the **state**
29 general fund. The state engineer may maintain, with the approval of the
30 state board of examiners, a checking account in any bank qualified to
31 handle state money to carry out the provisions of this subsection. The bank
32 account must be secured by a depository bond satisfactory to the state
33 board of examiners to the extent the account is not insured by the Federal
34 Deposit Insurance Corporation.

35 **Sec. 8.** NRS 233B.039 is hereby amended to read as follows:

36 233B.039 1. The following agencies are entirely exempted from the
37 requirements of this chapter:

- 38 (a) The governor.
39 (b) The department of prisons.
40 (c) The University and Community College System of Nevada.
41 (d) The office of the military.
42 (e) The state gaming control board.
43 (f) The Nevada gaming commission.

- 1 (g) The welfare division of the department of human resources.
2 (h) The state board of examiners acting pursuant to chapter 217 of NRS.
3 (i) ~~Except as otherwise provided in NRS 533.365, the~~ **The** office of
4 the state engineer.
- 5 2. Except as otherwise provided in NRS 391.323, the department of
6 education, the committee on benefits and the commission on professional
7 standards in education are subject to the provisions of this chapter for the
8 purpose of adopting regulations but not with respect to any contested case.
- 9 3. The special provisions of:
- 10 (a) Chapter 612 of NRS for the distribution of regulations by and the
11 judicial review of decisions of the employment security division of the
12 department of employment, training and rehabilitation;
13 (b) Chapters 616A to 617, inclusive, of NRS for the determination of
14 contested claims;
15 (c) Chapter 703 of NRS for the judicial review of decisions of the
16 public utilities commission of Nevada;
17 (d) Chapter 91 of NRS for the judicial review of decisions of the
18 administrator of the securities division of the office of the secretary of
19 state; and
20 (e) NRS 90.800 for the use of summary orders in contested cases,
21 prevail over the general provisions of this chapter.
- 22 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and
23 233B.126 do not apply to the department of human resources in the
24 adjudication of contested cases involving the issuance of letters of
25 approval for health facilities and agencies.
- 26 5. The provisions of this chapter do not apply to:
- 27 (a) Any order for immediate action, including, but not limited to,
28 quarantine and the treatment or cleansing of infected or infested animals,
29 objects or premises, made under the authority of the state board of
30 agriculture, the state board of health, the state board of sheep
31 commissioners or any other agency of this state in the discharge of a
32 responsibility for the preservation of human or animal health or for insect
33 or pest control; or
34 (b) An extraordinary regulation of the state board of pharmacy adopted
35 pursuant to NRS 453.2184.
- 36 6. The state board of parole commissioners is subject to the provisions
37 of this chapter for the purpose of adopting regulations but not with respect
38 to any contested case.