

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 ~~for 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; 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. The priority of a water right acquired by a person for use in a***
4 ***federal reclamation project is determined according to the date on which***
5 ***the United States appropriated water for initiation of the project.***
6 ***Notwithstanding the fact that the water right so appropriated and***
7 ***acquired may ultimately vest in the name of the person at a later date, all***
8 ***such water rights so acquired are governed by the applicable law of this***
9 ***state in effect on the date on which the United States appropriated water***
10 ***for initiation of the project, unless the water rights vested under the law***
11 ***in this state before the time the United States first appropriated or***
12 ***otherwise acquired the water for initiation of the project. If the water***
13 ***right vested under the law in this state before appropriation or***
14 ***acquisition by the United States, the date of initiation of the water right is***

1 *determined according to the date on which the water was first diverted*
2 *under that appropriation or acquisition by the United States.*

3 2. *No water rights, in addition to those allocated under applicable*
4 *court decrees, are granted, stated or implied by the determination of the*
5 *date of priority pursuant to subsection 1.*

6 **Sec. 2.** NRS 533.040 is hereby amended to read as follows:

7 533.040 ~~{All}~~

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

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

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

18 ~~—2.— That the}~~

19 3. *The* provisions of this section ~~{shall}~~ *do* not apply ~~{in cases of}~~ *to a*
20 ditch or canal ~~{companies which have appropriated}~~ *company that*
21 *appropriates* water for diversion and transmission to the lands of private
22 persons ~~{at}~~ *for* an annual charge.

23 4. *For the purposes of this section, a water right acquired for use in*
24 *a federal reclamation project shall be deemed to be appurtenant to the*
25 *property of any person who owns water rights within the project and may*
26 *be used on any portion of that property within the project if the*
27 *cumulative amount of water so used does not exceed the total amount of*
28 *water owned by the holder of the water right.*

29 **Sec. 3.** NRS 533.060 is hereby amended to read as follows:

30 533.060 1. Rights to the use of water ~~{shall}~~ *must* be limited and
31 restricted to ~~{so much thereof}~~ *as much* as may be necessary, when
32 reasonably and economically used for irrigation and other beneficial
33 purposes, irrespective of the carrying capacity of the ditch. ~~{All the}~~ *The*
34 balance of the water not so appropriated ~~{shall}~~ *must* be allowed to flow in
35 the natural stream from which ~~{such}~~ *the* ditch draws its supply of water,
36 and ~~{shall}~~ *must* not be considered as having been appropriated thereby.

37 2. ~~{Except as otherwise provided in subsection 4, if the owner or~~
38 ~~owners of any such ditch, canal, reservoir, or any other means of diverting~~
39 ~~any of the public water fail to use the water therefrom or thereby for~~
40 ~~beneficial purposes for which the right of use exists during any 5~~
41 ~~successive years, the right to so use shall be deemed as having been~~
42 ~~abandoned, and any such owner or owners thereupon forfeit all water~~
43 ~~rights, easements and privileges appurtenant thereto theretofore acquired,~~

1 ~~and all the water so formerly appropriated by such owner or owners and~~
2 ~~their predecessors in interest may be again appropriated for beneficial use~~
3 ~~the same as if such ditch, canal, reservoir or other means of diversion had~~
4 ~~never been constructed, and any qualified person may appropriate any such~~
5 ~~water for beneficial use.~~

6 ~~—3.—~~ *No} Rights to the use of surface water shall not be deemed to be*
7 *lost or otherwise forfeited for the failure to use the water therefrom for a*
8 *beneficial purpose. In a determination of whether a right to use surface*
9 *water has been abandoned, a presumption that the right to use the*
10 *surface water has not been abandoned is created upon the submission of:*

11 *(a) Records, photographs, receipts, contracts, affidavits or any other*
12 *proof of the occurrence of any of the following events or actions within a*
13 *10-year period immediately preceding any claim that the right to use the*
14 *water has been abandoned:*

15 *(1) The delivery of water;*

16 *(2) The payment of any costs of maintenance and other operational*
17 *costs incurred in delivering the water;*

18 *(3) The payment of any costs for capital improvements, including*
19 *works of diversion and irrigation; or*

20 *(4) The actual performance of maintenance related to the delivery*
21 *of the water.*

22 *(b) A copy of a local ordinance or other equivalent governmental*
23 *document in which the governing body of a local government of this state*
24 *or a public utility which is a purveyor of water within this state requires*
25 *the dedication of or otherwise recognizes the water rights as a resource*
26 *for the current or future municipal water supply.*

27 **3.** A prescriptive right to the use of ~~{such}~~ *the* water or any of the
28 public water appropriated or unappropriated ~~{can}~~ *may not* be acquired by
29 ~~{adverse user or}~~ adverse possession . ~~{for any period of time whatsoever,~~
30 ~~but any}~~ *Any* such right to appropriate any of ~~{such water shall}~~ *the water*
31 *must* be initiated by ~~{first making application}~~ *applying* to the state
32 engineer for a permit to appropriate the ~~{same}~~ *water* as provided in this
33 chapter . ~~{and not otherwise.}~~

34 **4.** The State of Nevada reserves for its own present and future use all
35 rights to the use and diversion of water acquired pursuant to chapter 462,
36 Statutes of Nevada 1963, or otherwise existing within the watersheds of
37 Marlette Lake, Franktown Creek and Hobart Creek and not lawfully
38 appropriated on April 26, 1963, by any person other than the Marlette
39 Lake Company. ~~{No such right may}~~ *Such a right must not* be
40 appropriated by any person without the express consent of the legislature.

41 **Sec. 4.** This act becomes effective upon passage and approval.