

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 a water right has been abandoned; declaring that certain water rights are not subject to a determination of abandonment; 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; establishing the Newlands Project Water Rights Fund and a related program for the acquisition of certain surface water rights; 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 a
2 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***

1 *acquisition by the United States, the date of initiation of the water right is*
2 *determined according to the date on which the water was first diverted*
3 *under that appropriation or acquisition by the United States.*

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

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

8 533.040 ~~{All}~~

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

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

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

19 ~~—2.— That the}~~

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

24 *4. For the purposes of this section, a surface water right acquired by*
25 *a water user in a federal reclamation project may be considered*
26 *appurtenant to an entire farm, instead of specifically identifiable land*
27 *within that farm, upon the granting of a permit for the change of place*
28 *of use by the state engineer which designates the place of use as the*
29 *entire farm. The quantity of water available for use on that farm must*
30 *not exceed the total amount determined by applicable decrees as*
31 *designated in the permit granted by the state engineer.*

32 *5. As used in this section, “farm” means a tract of land under the*
33 *same ownership that is primarily used for agricultural purposes.*

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

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

42 *2. ~~{Except as otherwise provided in subsection 4, if the owner or~~*
43 *~~owners of any such ditch, canal, reservoir, or any other means of diverting~~*

1 ~~any of the public water fail to use the water therefrom or thereby for~~
2 ~~beneficial purposes for which the right of use exists during any 5 successive~~
3 ~~years, the right to so use shall be deemed as having been abandoned, and~~
4 ~~any such owner or owners thereupon forfeit all water rights, easements and~~
5 ~~privileges appurtenant thereto theretofore acquired, and all the water so~~
6 ~~formerly appropriated by such owner or owners and their predecessors in~~
7 ~~interest may be again appropriated for beneficial use the same as if such~~
8 ~~ditch, canal, reservoir or other means of diversion had never been~~
9 ~~constructed, and any qualified person may appropriate any such water for~~
10 ~~beneficial use.~~

11 **3.—No] Rights to the use of surface water shall not be deemed to be**
12 **lost or otherwise forfeited for the failure to use the water therefrom for a**
13 **beneficial purpose.**

14 **3. A surface water right that is appurtenant to land formerly used**
15 **primarily for agricultural purposes is not subject to a determination of**
16 **abandonment if the surface water right:**

17 **(a) Is appurtenant to land that has been converted to urban use; or**
18 **(b) Has been dedicated to or acquired by a water purveyor, public**
19 **utility or public body for municipal use.**

20 **4. In a determination of whether a right to use surface water has**
21 **been abandoned, a presumption that the right to use the surface water**
22 **has not been abandoned is created upon the submission of records,**
23 **photographs, receipts, contracts, affidavits or any other proof of the**
24 **occurrence of any of the following events or actions within a 10-year**
25 **period immediately preceding any claim that the right to use the water**
26 **has been abandoned:**

27 **(a) The delivery of water;**
28 **(b) The payment of any costs of maintenance and other operational**
29 **costs incurred in delivering the water;**
30 **(c) The payment of any costs for capital improvements, including**
31 **works of diversion and irrigation; or**
32 **(d) The actual performance of maintenance related to the delivery of**
33 **the water.**

34 **5. 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.] 6. The State of Nevada reserves for its own present and future use**
42 **all rights to the use and diversion of water acquired pursuant to chapter**
43 **462, Statutes of Nevada 1963, or otherwise existing within the watersheds**

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

5 **Sec. 4.** 1. The legislature hereby finds and declares that a general
6 law cannot be made applicable to the purposes, objects, powers, rights,
7 privileges, liabilities and duties provided in this section because of the
8 number of atypical factors and special conditions relating thereto.

9 2. The Newlands Project Water Rights Fund is hereby established to be
10 administered by the Carson Water Subconservancy District. The money in
11 the fund may only be used for the support of the program established
12 pursuant to subsection 3. The District may accept gifts and grants for
13 deposit in the Fund and shall make every effort to secure money for the
14 Fund from:

- 15 (a) The Federal Government;
- 16 (b) The State of Nevada;
- 17 (c) Sierra Pacific Power Company or its affiliates;
- 18 (d) Carson Water Subconservancy District;
- 19 (e) Carson-Truckee Water Conservancy District; and
- 20 (f) Any other interested parties.

21 3. The Carson Water Subconservancy District shall establish a program
22 for the acquisition of surface water rights to assist in the resolution of legal
23 and administrative challenges in existence on April 1, 1999, regarding
24 water rights for the Newlands Reclamation Project. The District shall:

25 (a) Adopt criteria for the administration of the program, including,
26 without limitation, criteria to determine the fair market value of the water
27 rights to be acquired;

28 (b) Acquire surface water rights appurtenant to not more than 6,500
29 acres of land in the Newlands Reclamation Project at an amount not to
30 exceed the fair market value of the water rights;

31 (c) Acquire these water rights only from willing sellers with the
32 execution of a suitable binding contract for sale in which the seller
33 acknowledges that, upon completion of the sale:

34 (1) His right to the water sold is retired and deemed abandoned; and
35 (2) He waives any right to claim further compensation for the water
36 rights so acquired by the District;

37 (d) Retain reasonable fees for the administration of the program; and

38 (e) Complete an annual report on the program and make it available for
39 public review.

40 **Sec. 5.** The amendatory provisions of sections 1, 2 and 3 of this act:

41 1. Do not apply to water rights that are under challenge in any legal or
42 administrative proceeding which is pending on or before April 1, 1999; and

1 2. Do not constitute a legislative declaration that the law to be applied
2 in any such pending proceeding is different from or the same as set forth in
3 this act.

4 **Sec. 6.** 1. This act becomes effective upon passage and approval.

5 2. Section 4 of this act expires by limitation on July 1, 2004.

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