

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 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; increasing the amount of bonds that may be issued for the purchase or lease of water rights or interests in land and any water rights appurtenant thereto; limiting certain uses of the proceeds of those bonds; 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***

1 *for initiation of the project, unless the water rights vested under the law*
2 *in this state before the time the United States first appropriated or*
3 *otherwise acquired the water for initiation of the project. If the water*
4 *right vested under the law in this state before appropriation or*
5 *acquisition by the United States, the date of initiation of the water right is*
6 *determined according to the date on which the water was first diverted*
7 *under that appropriation or acquisition by the United States.*

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

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

12 533.040 ~~{All}~~

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

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

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

23 ~~—2. That the}~~

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

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

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

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

39 533.060 1. Rights to the use of water ~~{shall}~~ *must* be limited and
40 restricted to ~~{so much thereof}~~ *as much* as may be necessary, when

41 reasonably and economically used for irrigation and other beneficial
42 purposes, irrespective of the carrying capacity of the ditch. ~~{All the}~~ *The*

43 balance of the water not so appropriated ~~{shall}~~ *must* be allowed to flow in

1 the natural stream from which ~~{such}~~ **the** ditch draws its supply of water,
2 and ~~{shall}~~ **must** not be considered as having been appropriated thereby.

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

15 ~~3.—No~~ **Rights to the use of surface water shall not be deemed to be**
16 **lost or otherwise forfeited for the failure to use the water therefrom for a**
17 **beneficial purpose.**

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

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

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

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

38 5. **A prescriptive right to the use of ~~{such}~~ the water or any of the**
39 **public water appropriated or unappropriated ~~{can}~~ may not be acquired by**
40 **~~{adverse user or}~~ adverse possession . ~~{for any period of time whatsoever,~~**
41 **~~but any}~~ **Any such right to appropriate any of ~~{such water shall}~~ the water**
42 **must be initiated by ~~{first making application}~~ applying to the state****

1 engineer for a permit to appropriate the ~~{same}~~ **water** as provided in this
2 chapter . ~~{and not otherwise.}~~

3 ~~{4.}~~ **6.** The State of Nevada reserves for its own present and future use
4 all rights to the use and diversion of water acquired pursuant to chapter
5 462, Statutes of Nevada 1963, or otherwise existing within the watersheds
6 of Marlette Lake, Franktown Creek and Hobart Creek and not lawfully
7 appropriated on April 26, 1963, by any person other than the Marlette Lake
8 Company. ~~{No such right may}~~ **Such a right must not** be appropriated by
9 any person without the express consent of the legislature.

10 **Sec. 4.** Chapter 478, Statutes of Nevada 1983, at page 1269, is hereby
11 amended by adding thereto a new section to be designated as sec. 2.6,
12 immediately following sec. 2.5, to read as follows:

13 **Sec. 2.6.** *The state board of examiners shall, at one time or*
14 *from time to time over a 5-year period beginning with the*
15 *effective date of Assembly Bill No. 380 of the 70th session of the*
16 *Nevada Legislature, issue general obligation bonds of the State of*
17 *Nevada to provide the state's contribution to the Newlands Project*
18 *Water Rights Fund established by Assembly Bill No. 380 of the*
19 *70th session of the Nevada Legislature, in a total face amount of*
20 *not more than \$4,000,000. Bonds issued pursuant to this section*
21 *are necessary for the protection and preservation of the state's*
22 *natural resources.*

23 **Sec. 5.** Section 1 of chapter 478, Statutes of Nevada 1983, as amended
24 by section 7 of chapter 785, Statutes of Nevada 1989, at page 1866, is
25 hereby amended to read as follows:

26 **Section 1.** The director of the state department of conservation
27 and natural resources shall participate, on behalf of the state, in
28 negotiations with agencies of the Federal Government and other
29 appropriate agencies or organizations concerning projects to
30 conserve, distribute and allocate water associated with the Truckee
31 River, the Carson River, the Lahontan Valley Wetlands and the
32 Newlands Federal Reclamation Project. The projects may include
33 projects for the purchase or lease of water rights, land or interests in
34 land and any water rights appurtenant thereto, or projects to
35 mitigate losses to natural resources. The governor, on behalf of the
36 State of Nevada, may enter into an agreement or agreements which
37 define the rights, powers, duties and obligations of the state, the
38 Federal Government and any other appropriate agency or
39 organization with respect to those projects, but the state's share of
40 the costs associated with those projects must not exceed
41 ~~{ \$8,000,000. }~~ **\$12,000,000**, and providing that not more than
42 ~~{ \$4,000,000 }~~ **\$8,000,000** of that amount may be used for the
43 purchase or lease of water rights or interests in land and any water

rights appurtenant thereto ~~H~~, *and further providing that not more than \$4,000,000 of that amount may be used as the state's contribution to the Newlands Project Water Rights Fund established by Assembly Bill No. 380 of the 70th session of the Nevada Legislature.*

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

2. The Newlands Project Water Rights Fund is hereby established to be administered by the Carson Water Subconservancy District. The money in the fund may only be used:

(a) For the support of the program established pursuant to subsection 4; and

(b) To provide for the payment of an amount to offset revenue from operation and maintenance charges lost as a result of water rights retired and abandoned pursuant to the program.

3. The District may accept gifts and grants for deposit in the Fund and shall make every effort to secure money for the Fund from:

(a) The Federal Government;

(b) The State of Nevada;

(c) Sierra Pacific Power Company or its affiliates;

(d) Carson Water Subconservancy District;

(e) Carson-Truckee Water Conservancy District; and

(f) Any other interested parties.

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

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

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

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

(1) His right to the water sold is retired and deemed abandoned; and

(2) He waives any right to claim further compensation for the water rights so acquired by the District;

(d) Retain reasonable fees for the administration or operation of the program;

1 (e) To the extent that legal and administrative challenges in existence on
2 April 1, 1999, result in a final determination that all or any portion of a
3 surface water right appurtenant to land in the Newlands Reclamation
4 Project has been forfeited or abandoned:

5 (1) Pay to the party who procured that final determination an amount
6 equal to the amount that would have been paid to acquire the water right
7 pursuant to the program; and

8 (2) Consider the forfeited or abandoned water right as having been
9 acquired pursuant to the program; and

10 (f) Complete an annual report on the program and make it available for
11 public review.

12 **Sec. 7.** The amendatory provisions of sections 1, 2 and 3 of this act:

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

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

18 **Sec. 8.** 1. This act becomes effective upon passage and approval.

19 2. Section 6 of this act expires by limitation on July 1, 2004.