

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; establishing the Newlands Project Water Rights Fund and a related program for the acquisition of certain surface water rights; making an appropriation; 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***

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

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

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

9 533.040 ~~{All}~~

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

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

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

20 ~~—2.— That the}~~

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~[4.]~~ 6. The State of Nevada reserves for its own present and future use
2 all rights to the use and diversion of water acquired pursuant to chapter
3 462, Statutes of Nevada 1963, or otherwise existing within the watersheds
4 of Marlette Lake, Franktown Creek and Hobart Creek and not lawfully
5 appropriated on April 26, 1963, by any person other than the Marlette Lake
6 Company. ~~[No such right may]~~ **Such a right must not** be appropriated by
7 any person without the express consent of the legislature.

8 **Sec. 4.** 1. There is hereby appropriated from the state general fund to
9 the Newlands Project Water Rights Fund, created by section 5 of this act,
10 the sum of \$3,300,000 as the state's contribution to the fund for the
11 protection and preservation of the natural resources of this state. All
12 interest generated from this appropriation accrues to the benefit of the
13 Newlands Project Water Rights Fund.

14 2. The Carson Water Subconservancy District shall not commit for
15 expenditure any amount of the appropriation made by subsection 1 until the
16 District determines that:

17 (a) There is and will continue to be substantial compliance with the
18 "Joint Testimony of Truckee-Carson Irrigation District, Pyramid Lake
19 Paiute Tribe of Indians, City of Fallon, Churchill County and Sierra Pacific
20 Power Company," dated by the parties thereto on May 6, 1999, and
21 submitted to a hearing of the Senate Standing Committee on Finance on
22 May 24, 1999; and

23 (b) The City of Fallon and Churchill County have withdrawn all
24 administrative protests and have sought to dismiss all legal actions initiated
25 by the city and county, respectively, relating to applications for changes in
26 the point of diversion, place of use or manner of use of water rights pending
27 before the State Engineer on the effective date of this act as required by that
28 joint testimony.

29 3. The Carson Water Subconservancy District shall not commit for
30 expenditure during the next biennium more than \$1,600,000 of the
31 appropriation made by subsection 1.

32 4. Any remaining balance of the appropriation made by subsection 1
33 must not be committed for expenditure after June 30, 2004, and reverts to
34 the state general fund as soon as all payments of money committed have
35 been made.

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

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

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

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

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

8 (a) The Federal Government;

9 (b) The State of Nevada;

10 (c) Sierra Pacific Power Company or its affiliates;

11 (d) Carson Water Subconservancy District;

12 (e) Carson-Truckee Water Conservancy District; and

13 (f) Any other interested parties.

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

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

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

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

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

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

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

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

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

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

41 (f) Complete an annual report on the program and make it available for
42 public

review.

1 **Sec. 6.** The 71st regular session of the Nevada Legislature shall review
2 the manner in which the appropriation made by section 4 of this act has
3 been expended and determine whether there has been substantial
4 compliance with the "Joint Testimony of Truckee-Carson Irrigation
5 District, Pyramid Lake Paiute Tribe of Indians, City of Fallon, Churchill
6 County and Sierra Pacific Power Company," dated by the parties thereto on
7 May 6, 1999, and submitted to a hearing of the Senate Standing Committee
8 on Finance on May 24, 1999.

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

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

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

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

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