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BILL SUMMARY
72nd REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

SENATE BILL 76
(First Reprint)

Topic

Senate Bill 76 revises the statutes governing stockwater rights in the State of Nevada.

Summary

Senate Bill 76 sets up a two-pronged approach to obtaining water rights for the purpose of watering livestock in Nevada. An initial procedure is established in statute, but if this approach is found to be unconstitutional, a secondary or "backup" procedure automatically takes its place.

Initial Approach

As an initial approach, the measure provides that the State Engineer may issue a permit to water livestock only to the rancher who owns, leases, or manages the livestock. Thus, the owner of the land upon which the livestock is grazed/watered (if it is a public entity or a person other than the rancher who owns, leases, or manages the livestock) cannot receive a permit solely in its own name or jointly with the rancher.

Such a water right is also declared to be appurtenant to: (1) the land where the livestock is watered if it is owned by the rancher; or (2) land contiguous to the land where the livestock is watered if this contiguous property is owned by the rancher.

Secondary Approach

If the initial approach is found to be unconstitutional, the bill sets up an automatic default to a system through which the State Engineer may issue a permit to water livestock solely to the rancher owning the livestock or jointly to the rancher and the owner of the land where the livestock is grazed/watered.

Effective Date

Certain provisions of the bill are effective on passage and approval, while the effective dates for other provisions are staggered to foster implementation of the two-pronged approach.

Background Information

The livestock industry has been central to Nevada's rural lifestyle and an essential element of its rural economy since statehood. And, because Nevada is the most arid state in the Nation, water to support livestock grazing has been, and continues to be, critical to the industry.

Although S.B. 76 applies to all lands in the State, 87 percent of Nevada's land is in public ownership. Therefore, the provisions of water law relating to livestock watering on public lands have been especially controversial. Livestock is grazed on public lands by permit, and many of the permitted livestock operations have remained in a single family's name for several generations. The costs of developing water resources can be substantial over time, and ownership of the water right is a critical element to a ranching operation.

Historically, in Nevada a permit to appropriate water for livestock watering on public lands could be granted: (1) solely in the name of the rancher who holds a grazing permit; (2) solely in the name of the public landowner; or (3) jointly in the names of the rancher and the public landowner. New federal regulations adopted by the U.S. Bureau of Land Management (BLM) in 1994, however, included a provision requiring the federal agency to file for water rights in its own name to the degree allowed under state law. Thus, stockwater rights in the name of the range user alone were effectively precluded.

In 1995, the Nevada Legislature attempted to address this situation by passing legislation intended to require that a person own the livestock in order to receive a stockwater permit on public lands. In 2001, however, the Nevada Supreme Court ruled that the BLM could receive water rights on the basis that the agency is authorized to place livestock on the public lands. Again, a combination of the federal regulation and the Supreme Court's interpretation of the State statute effectively allowed the federal agency to obtain a stockwater right, but precluded the rancher from doing so.

Senate Bill 76 is designed to resolve the situation through the two-pronged approach previously described. The topic is extremely contentious and any procedure adopted by the Legislature could be subject to litigation. Thus, Attorney General Brian Sandoval provided a letter highlighting his conclusion indicating: "We believe that S.B. 76 is fair and nondiscriminatory legislation, and we are therefore prepared to defend S.B. 76, if enacted, against legal challenge."

From the federal perspective, however, a letter from Bob Abbey, State Director of the BLM, indicates that he feels the BLM cannot support the amended version of S.B. 76 and that it may again end up in litigation.

After due consideration of the relevant testimony, the Committee concluded that the two-pronged approach contained in Senate Bill 76 provides the greatest opportunity for success in achieving the goals that are so significant to the State's livestock industry.