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SENATE BILL NO. 76—COMMITTEE ON NATURAL RESOURCES

(ON BEHALF OF LEGISLATIVE COMMITTEE ON
PUBLIC LANDS (NRS 218.5363))

FEBRUARY 11, 2003

Referred to Committee on Natural Resources

SUMMARY—Revises provisions governing acquisition of water rights for purposes of watering livestock. (BDR 48-670)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION—Matter in *bolded italics* is new; matter between brackets [omitted-matter] is material to be omitted.

AN ACT relating to water; revising the restrictions on the issuance of permits to appropriate water for the purpose of watering livestock and certificates of appropriation based upon such permits; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Secondary
Approach**

(Allows Joint
Permits and
Certificates)

- 1 **Section 1.** Chapter 533 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 1. *The State Engineer shall not issue a permit to appropriate*
4 *water for the purpose of watering livestock unless:*
5 (a) *The applicant for the permit, or if the application for the*
6 *permit is made by two or more applicants at least one of the*
7 *applicants for the permit, is legally entitled to place the livestock*
8 *on the lands for which the permit is sought, and:*
9 (1) *Owens, leases or otherwise possesses a legal or*
10 *proprietary interest in the livestock on or to be placed on the lands*
11 *for which the permit is sought; or*
12 (2) *Has received from a person described in subparagraph*
13 (1), *authorization to have physical custody of the livestock on or to*

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1 be placed on the lands for which the permit is sought, and
2 authorization to care for, control and maintain such livestock;

3 (b) If the application for the permit is made by two or more
4 applicants, each applicant for the permit, to the extent authorized
5 by law, agrees to contribute to:

6 (1) The means for putting to beneficial use the water for
7 which the permit is sought; and

8 (2) The development, using the procedures administered by
9 the State Engineer, of the water rights for which the permit is
10 sought;

11 (c) The forage serving the beneficial use of the water to be
12 appropriated is not encumbered by an adjudicated grazing
13 preference recognized pursuant to federal law for the benefit of a
14 person other than the applicant for the permit, or if the application
15 for the permit is made by two or more applicants, for the benefit of
16 a person other than at least one of the applicants for the permit;
17 and

18 (d) The lack of encumbrance required by paragraph (c) is
19 demonstrated by reasonable means, including, without limitation,
20 evidence of a valid grazing permit, other than a temporary grazing
21 permit, that is issued by the appropriate governmental entity to the
22 applicant, or if the application for the permit is made by two or
23 more applicants to at least one of the applicants for the permit.

24 2. The State Engineer shall not issue a certificate of
25 appropriation based upon a permit to appropriate water for the
26 purpose of watering livestock unless:

27 (a) The holder of the permit, or if the permit is held by two or
28 more persons at least one of those persons, makes satisfactory
29 proof that the water has been beneficially used, is legally entitled
30 to place on the lands the livestock which have been watered
31 pursuant to the permit, and:

32 (1) Owns, leases or otherwise possesses a legal or
33 proprietary interest in the livestock which have been watered
34 pursuant to the permit; or

35 (2) Has received from a person described in subparagraph
36 (1), authorization to have physical custody of the livestock which
37 have been watered pursuant to the permit, and authorization to
38 care for, control and maintain such livestock;

39 (b) If the permit is held by two or more persons, each person
40 who holds the permit, to the extent authorized by law, has
41 contributed to:

42 (1) The means for putting to beneficial use the water for
43 which the certificate is sought; and

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1 (2) *The development, using the procedures administered by*
2 *the State Engineer, of the water rights for which the certificate is*
3 *sought;*

4 (c) *The forage serving the beneficial use of the water that has*
5 *been beneficially used is not encumbered by an adjudicated*
6 *grazing preference recognized pursuant to federal law for the*
7 *benefit of a person other than the holder of the permit, or if the*
8 *permit is held by two or more persons, for the benefit of a person*
9 *other than at least one of the holders of the permit; and*

10 (d) *The lack of encumbrance required by paragraph (c) is*
11 *demonstrated by reasonable means, including, without limitation,*
12 *evidence of a valid grazing permit, other than a temporary grazing*
13 *permit, that is issued by the appropriate governmental entity to the*
14 *holder of the permit, or if the permit is held by two or more*
15 *persons to at least one of the holders of the permit.*

16 3. *This section must not be construed to impair the vested*
17 *right of any person to the use of water for the purpose of watering*
18 *livestock or to prevent any transfer of ownership of a water right*
19 *for the purpose of watering livestock.*

20 4. *As used in this section, "grazing preference" means a*
21 *priority position in the issuance of a permit to graze livestock on*
22 *the public range.*

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

24 533.040 1. Except as otherwise provided in this section, any
25 water used in this state for beneficial purposes shall be deemed to
26 remain appurtenant to the place of use.

27 2. If at any time it is impracticable to use water beneficially or
28 economically at the place to which it is appurtenant, the right may
29 be severed from the place of use and be simultaneously transferred
30 and become appurtenant to another place of use, in the manner
31 provided in this chapter, without losing priority of right.

32 3. The provisions of this section do not apply to a ditch or
33 canal company that appropriates water for diversion and
34 transmission to the lands of private persons for an annual charge.

35 4. For the purposes of this section, a surface water right
36 acquired by a water user in a federal reclamation project may be
37 considered appurtenant to an entire farm, instead of specifically
38 identifiable land within that farm, upon the granting of a permit for
39 the change of place of use by the State Engineer which designates
40 the place of use as the entire farm. The quantity of water available
41 for use on that farm must not exceed the total amount determined by
42 applicable decrees as designated in the permit granted by the State
43 Engineer.

44 5. *For the purposes of this section, a water right acquired for*
45 *watering livestock by a person who owns, leases or otherwise*

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1 possesses a legal or proprietary interest in the livestock being
2 watered is appurtenant to:

3 (a) The land on which the livestock is watered if the land is
4 owned by the person who possesses a legal or proprietary interest
5 in the livestock; or

6 (b) The land located contiguous to the land on which the
7 livestock is watered if that contiguous land is owned by the person
8 who possesses the legal or proprietary interest in the livestock
9 being watered.

10 6. The provisions of subsection 5 must not be construed:

11 (a) To impair a vested right or other existing water right
12 established before the effective date of this act of a person to the
13 use of water for the purpose of watering livestock; or

14 (b) To prevent any transfer of ownership of a water right for
15 the purpose of watering livestock.

16 7. As used in this section, "farm" means a tract of land under
17 the same ownership that is primarily used for agricultural purposes.

18 Sec. 3. NRS 533.370 is hereby amended to read as follows:

19 533.370 1. Except as otherwise provided in this section and
20 NRS 533.345, 533.371, 533.372 and ~~533.503,~~ section 1 of this act,
21 the State Engineer shall approve an application submitted in proper
22 form which contemplates the application of water to beneficial use
23 if:

24 (a) The application is accompanied by the prescribed fees;

25 (b) The proposed use or change, if within an irrigation district,
26 does not adversely affect the cost of water for other holders of water
27 rights in the district or lessen the efficiency of the district in its
28 delivery or use of water; and

29 (c) The applicant provides proof satisfactory to the State
30 Engineer of:

31 (1) His intention in good faith to construct any work
32 necessary to apply the water to the intended beneficial use with
33 reasonable diligence; and

34 (2) His financial ability and reasonable expectation actually
35 to construct the work and apply the water to the intended beneficial
36 use with reasonable diligence.

37 2. Except as otherwise provided in subsection 6, the State
38 Engineer shall approve or reject each application within 1 year after
39 the final date for filing a protest. However:

40 (a) Action may be postponed by the State Engineer upon written
41 authorization to do so by the applicant or, if an application is
42 protested, by the protestant and the applicant; and

43 (b) In areas where studies of water supplies have been
44 determined to be necessary by the State Engineer pursuant to NRS
45 533.368 or where court actions are pending, the State Engineer may

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1 withhold action until it is determined there is unappropriated water
2 or the court action becomes final.

3 3. Except as otherwise provided in subsection 6, where there is
4 no unappropriated water in the proposed source of supply, or where
5 its proposed use or change conflicts with existing rights or with
6 protectible interests in existing domestic wells as set forth in NRS
7 533.024, or threatens to prove detrimental to the public interest, the
8 State Engineer shall reject the application and refuse to issue the
9 requested permit. If a previous application for a similar use of water
10 within the same basin has been rejected on those grounds, the new
11 application may be denied without publication.

12 4. In determining whether an application for an interbasin
13 transfer of ground water must be rejected pursuant to this section,
14 the State Engineer shall consider:

15 (a) Whether the applicant has justified the need to import the
16 water from another basin;

17 (b) If the State Engineer determines that a plan for conservation
18 of water is advisable for the basin into which the water is to be
19 imported, whether the applicant has demonstrated that such a plan
20 has been adopted and is being effectively carried out;

21 (c) Whether the proposed action is environmentally sound as it
22 relates to the basin from which the water is exported;

23 (d) Whether the proposed action is an appropriate long-term use
24 which will not unduly limit the future growth and development in
25 the basin from which the water is exported; and

26 (e) Any other factor the State Engineer determines to be
27 relevant.

28 5. If a hearing is held regarding an application, the decision of
29 the State Engineer must be in writing and include findings of fact,
30 conclusions of law and a statement of the underlying facts
31 supporting the findings of fact. The written decision may take the
32 form of a transcription of an oral ruling. The rejection or approval of
33 an application must be endorsed on a copy of the original
34 application, and a record *must be* made of the endorsement in the
35 records of the State Engineer. The copy of the application so
36 endorsed must be returned to the applicant. Except as otherwise
37 provided in subsection 7, if the application is approved, the
38 applicant may, on receipt thereof, proceed with the construction of
39 the necessary works and take all steps required to apply the water to
40 beneficial use and to perfect the proposed appropriation. If the
41 application is rejected, the applicant may take no steps toward
42 the prosecution of the proposed work or the diversion and use of the
43 public water while the rejection continues in force.

44 6. The provisions of subsections 1 to 4, inclusive, do not apply
45 to an application for an environmental permit.

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1 7. The provisions of subsection 5 do not authorize the recipient
2 of an approved application to use any state land administered by the
3 Division of State Lands of the State Department of Conservation
4 and Natural Resources without the appropriate authorization for that
5 use from the State Land Registrar.

6 8. As used in this section, "interbasin transfer of ground water"
7 means a transfer of ground water for which the proposed point of
8 diversion is in a different basin than the proposed place of beneficial
9 use.

10 **Sec. 4.** NRS 533.425 is hereby amended to read as follows:

11 533.425 1. Except as otherwise provided in ~~{NRS 533.503,}~~
12 *section 1 of this act*, as soon as practicable after satisfactory proof
13 has been made to the State Engineer that any application to
14 appropriate water or any application for permission to change the
15 place of diversion, manner or place of use of water already
16 appropriated has been perfected in accordance with the provisions of
17 this chapter, the State Engineer shall issue to the holder or holders of
18 the permit a certificate setting forth:

19 (a) The name and post office address of each holder of the
20 permit.

21 (b) The date, source, purpose and amount of appropriation.

22 (c) If for irrigation, a description of the irrigated lands by legal
23 subdivisions, when possible, to which the water is appurtenant.

24 (d) The number of the permit under which the certificate is
25 issued.

26 2. If the water is appropriated from an underground source, the
27 State Engineer shall issue with the certificate a notice of the
28 provisions governing the forfeiture and abandonment of such water
29 rights. The notice must set forth the provisions of NRS 534.090.

30 **Sec. 5.** NRS 533.485 is hereby amended to read as follows:

31 533.485 As used in NRS 533.485 to 533.510, inclusive ~~{}~~ ,
32 *and section 1 of this act*:

33 1. "Public range" means all lands belonging to the United
34 States and to the State of Nevada on which livestock are permitted
35 to graze, including lands set apart as national forests and lands
36 reserved for other purposes.

37 2. "Range livestock" shall mean livestock which during the
38 general period or season when they are being or are proposed to be
39 watered at the place involved shall be subsisting chiefly or entirely
40 by grazing on the public range.

41 **Sec. 6.** NRS 533.503 is hereby amended to read as follows:

42 533.503 1. The State Engineer shall not issue ~~{~~:

43 ~~—(a) A} a permit to appropriate water for the purpose of watering~~
44 ~~livestock {on public lands unless the} unless:~~

**Initial
Approach**

(Allows
Permits and
Certificates
Only in Name
of Owner of
Livestock)

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1 (a) *The applicant for the permit is legally entitled to place the*
2 *livestock on the ~~public~~ lands for which the permit is sought ~~for~~*
3 *~~(b) A~~, and:*

4 (1) *Owens, leases or otherwise possesses a legal or*
5 *proprietary interest in the livestock on or to be placed on the lands*
6 *for which the permit is sought; or*

7 (2) *Has received from a person described in subparagraph*
8 *(1), authorization to have physical custody of the livestock on or to*
9 *be placed on the lands for which the permit is sought, and*
10 *authorization to care for, control and maintain such livestock;*

11 (b) *The forage serving the beneficial use of the water to be*
12 *appropriated is not encumbered by an adjudicated grazing*
13 *preference recognized pursuant to federal law for the benefit of a*
14 *person other than the applicant for the permit; and*

15 (c) *The lack of encumbrance required by paragraph (b) is*
16 *demonstrated by reasonable means, including, without limitation,*
17 *evidence of a valid grazing permit, other than a temporary grazing*
18 *permit, that is issued by the appropriate governmental entity to the*
19 *applicant for the permit.*

20 2. *The State Engineer shall not issue a certificate of*
21 *appropriation based upon a permit to appropriate water for the*
22 *purpose of watering livestock ~~on public lands unless the person~~*
23 *~~who~~ unless:*

24 (a) *The holder of the permit makes satisfactory proof that the*
25 *water has been beneficially used, is legally entitled to place on*
26 *the ~~land~~ lands the livestock which have been watered pursuant to*
27 *the permit ~~for~~.*

28 *~~2~~, and:*

29 (1) *Owens, leases or otherwise possesses a legal or*
30 *proprietary interest in the livestock which have been watered*
31 *pursuant to the permit; or*

32 (2) *Has received from a person described in subparagraph*
33 *(1), authorization to have physical custody of the livestock which*
34 *have been watered pursuant to the permit, and authorization to*
35 *care for, control and maintain such livestock;*

36 (b) *The forage serving the beneficial use of the water that has*
37 *been beneficially used is not encumbered by an adjudicated*
38 *grazing preference recognized pursuant to federal law for the*
39 *benefit of a person other than the holder of the permit; and*

40 (c) *The lack of encumbrance required by paragraph (b) is*
41 *demonstrated by reasonable means, including, without limitation,*
42 *evidence of a valid grazing permit, other than a temporary grazing*
43 *permit, that is issued by the appropriate governmental entity to the*
44 *holder of the permit.*

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1 3. This section must not be construed to impair the vested right
2 of any person to the use of water for the purpose of watering
3 livestock or to prevent any transfer of ownership of a water right for
4 the purpose of watering livestock.

5 4. *As used in this section, "grazing preference" means a*
6 *priority position in the issuance of a permit to graze livestock on*
7 *the public range.*

8 Sec. 7. The provisions of sections 2 and 6 of this act do not
9 apply to a permit to appropriate water for the purposes of watering
10 livestock or a certificate of appropriation based upon such a permit
11 if the permit was issued by the State Engineer before the effective
12 date of this act, regardless of whether such a permit or certificate is
13 transferred after that date.

14 Sec. 8. The provisions of sections 1, 3, 4 and 5 of this act do
15 not apply to a permit to appropriate water for the purposes of
16 watering livestock or a certificate of appropriation based upon such
17 a permit if the permit is issued by the State Engineer before the date
18 on which sections 1, 3, 4 and 5 become effective, regardless of
19 whether such a permit or certificate is transferred after that date.

20 Sec. 9. 1. This section and sections 2, 6 and 7 of this act
21 become effective upon passage and approval.

22 2. If a court of competent jurisdiction invalidates all or part of
23 section 6 of this act and an event described in paragraph (a), (b) or
24 (c) of this subsection occurs on or before July 1, 2013, sections 2
25 and 6 of this act expire by limitation on:

26 (a) The date on which the court of last resort upholds the final
27 decision of the court of competent jurisdiction invalidating all or
28 part of section 6 of this act;

29 (b) The date on which the court of last resort declines to review
30 the final decision of the court of competent jurisdiction invalidating
31 all or part of section 6 of this act; or

32 (c) The date of the day following the day on which the time for
33 filing an appeal of the decision of the court of competent jurisdiction
34 invalidating all or part of section 6 of this act expires, if no appeal is
35 filed within that time,

36 whichever occurs first. If none of the events described in paragraphs
37 (a), (b) and (c) of this subsection occur on or before July 1, 2013,
38 sections 2 and 6 of this act do not expire by limitation pursuant to
39 this act.

40 3. Sections 1, 3, 4, 5 and 8 of this act become effective on the
41 date on which sections 2 and 6 of this act expire by limitation, if and
42 only if, sections 2 and 6 of this act expire by limitation on or before
43 July 1, 2013.

**Effective
Dates**

(For Initial
and
Secondary
Approaches)

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- 1 4. As used in this section, "court of last resort" means the court
- 2 having the authority to consider the final appeal of the case.

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