

SENATE BILL NO. 62—SENATOR RHOADS

FEBRUARY 16, 2005

Referred to Committee on Natural Resources

SUMMARY—Clarifies provisions governing duties of State Engineer concerning water rights. (BDR 48-681)

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

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to water; clarifying provisions governing the duties of the State Engineer concerning water rights; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Engineer to confirm or reject reports of conveyances of water rights that are filed with his Office. (NRS 533.386)

This bill clarifies that the confirmation of a report of conveyance is not a determination of ownership and that only a court of competent jurisdiction may adjudicate conflicting claims to ownership of a water right. This bill also clarifies that if it appears to the State Engineer that there is a conflict in the chain of title, the State Engineer shall reject a report of conveyance and take no further action with respect to the report until a court of competent jurisdiction has determined the conflicting claims to ownership of the water right and the determination has become final. This bill further clarifies that if the State Engineer learns that a court of competent jurisdiction has entered a judgment confirming ownership of a water right or resolving a conflict in a chain of title, and the judgment has become final, the State Engineer shall take such action as necessary to conform the records of his Office with the judgment, including, without limitation, amending or withdrawing a permit or certificate that was previously approved by the State Engineer. This bill has retroactive application.

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

Section 1. NRS 533.024 is hereby amended to read as follows:

533.024 The Legislature declares that ~~the~~ :

1. It is the policy of this State:



~~1-1~~ (a) To encourage and promote the use of effluent, where that use is not contrary to the public health, safety or welfare, and where that use does not interfere with federal obligations to deliver water of the Colorado River.

~~1-2~~ (b) To recognize the importance of domestic wells as appurtenances to private homes, to create a protectible interest in such wells and to protect their supply of water from unreasonable adverse effects which are caused by municipal, quasi-municipal or industrial uses and which cannot reasonably be mitigated.

2. The procedures in this chapter for changing the place of diversion, manner of use or place of use of water, and for confirming a report of conveyance, are not intended to have the effect of quieting title to a water right and that only a court of competent jurisdiction has the power to determine conflicting claims to ownership of a water right.

Sec. 2. NRS 533.386 is hereby amended to read as follows:

533.386 1. The State Engineer shall confirm that the report of conveyance required by paragraph (a) of subsection 1 of NRS 533.384 includes all material required by that subsection and that:

(a) The report is accompanied by the prescribed fee;

(b) No conflict exists in the chain of title that can be determined by the State Engineer from the conveyance documents or ~~from~~ other information on file in the Office of the State Engineer; and

(c) The State Engineer is able to determine the rate of diversion and the amount of water conveyed in acre-feet or million gallons from the conveyance documents or ~~from~~ other information on file in the Office of the State Engineer.

2. If the State Engineer confirms a report of conveyance pursuant to subsection 1, he shall in a timely manner provide a notice of the confirmation to the person who submitted the report of conveyance. The notice must include, without limitation ~~1-a~~:

(a) A statement indicating that neither the confirmation of the report of conveyance nor the report of conveyance, if the report sets forth the amount of water conveyed, guarantees that:

~~1-a~~ (1) The water right is in good standing with the Office of the State Engineer; or

~~1-b~~ (2) The amount of water referenced in the notice or in the report of conveyance is the actual amount of water that a person is entitled to use upon conveyance of the application or permit to appropriate any of the public waters, the certificate of appropriation, the adjudicated or unadjudicated water right, or the application or permit to change the place of diversion, manner of use or place of use of water.



(b) A statement that the confirmation of the report of conveyance is not a determination of ownership and that only a court of competent jurisdiction may adjudicate conflicting claims to ownership of a water right.

3. If the State Engineer determines that the report of conveyance is deficient, he shall reject the report of conveyance and return it to the person who submitted it, **together** with:

(a) An explanation of the deficiency; and

(b) A notice stating that the State Engineer will not confirm a report of conveyance that has been rejected unless the report is resubmitted with the material required to cure the deficiency. The notice must also include a statement of the provisions of subsection ~~4.4~~ 5.

4. *If, from the conveyance documents or other information in the Office of the State Engineer, it appears to the State Engineer that there is a conflict in the chain of title, the State Engineer shall reject the report of conveyance and return it to the person who submitted it, together with:*

(a) An explanation that a conflict appears to exist in the chain of title; and

(b) A notice stating that the State Engineer will not take further action with respect to the report of conveyance until a court of competent jurisdiction has determined the conflicting claims to ownership of the water right and the determination has become final. The notice must also include a statement of the provisions of subsection 5.

5. The State Engineer shall not consider or treat the person to whom:

(a) An application or permit to appropriate any of the public waters;

(b) A certificate of appropriation;

(c) An adjudicated or unadjudicated water right; or

(d) An application or permit to change the place of diversion, manner of use or place of use of water,

is conveyed as the owner or holder of the application, right, certificate or permit for the purposes of this chapter, including, without limitation, all advisements and other notices required of the State Engineer and the granting of permits to change the place of diversion, manner of use or place of use of water, until a report of the conveyance is confirmed pursuant to subsection 1.

6. *If the State Engineer is notified that a court of competent jurisdiction has entered a judgment confirming ownership of a water right or resolving a conflict in a chain of title, and that the judgment has become final, the State Engineer shall take such*



1 *administrative action as is appropriate or necessary to conform the*
2 *records of the Office of the State Engineer with the judgment of*
3 *the court, including, without limitation, amending or withdrawing*
4 *a permit or certificate that was previously approved by the State*
5 *Engineer.*

6 **Sec. 3.** The Legislature declares that it intends by this act to
7 clarify rather than change the operation of chapter 533 of NRS with
8 respect to the ownership of water rights.

9 **Sec. 4.** This act becomes effective upon passage and approval
10 and applies retroactively.

