

SENATE BILL NO. 341—SENATOR GOICOECHEA

MARCH 18, 2013

JOINT SPONSOR: ASSEMBLYMAN ELLISON

Referred to Committee on Natural Resources

SUMMARY—Revises provisions governing the transfer of water rights. (BDR 48-543)

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; requiring the State Engineer to consider certain conveyances or purported conveyances to be void; revising provisions which require the State Engineer to examine certain reports of conveyance and make determinations concerning those reports; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires that every conveyance of an application or permit to
2 appropriate any of the public waters, a certificate of appropriation, an adjudicated
3 or unadjudicated water right or an application or permit to change the place of
4 diversion, manner of use or place of use of water must be: (1) made by deed; (2)
5 notarized; and (3) recorded in the office of the county recorder of each county in
6 which the water is applied to beneficial use and in each county in which the water
7 is diverted from its natural source. (NRS 533.382) Existing law also provides that a
8 deed of conveyance that is not recorded as required is deemed void as against
9 certain subsequent purchasers who record a deed first. (NRS 533.383) Existing law
10 requires a person to whom is conveyed an application or permit to appropriate any
11 of the public waters, a certificate of appropriation, an adjudicated or unadjudicated
12 water right or an application or permit to change the place of diversion, manner of
13 use or place of use of water to file with the State Engineer a report of conveyance
14 which must include certain information, including an abstract of title and a copy of
15 any deed. (NRS 533.384) Finally, existing law requires the State Engineer, upon
16 receipt of such a report of conveyance, to confirm certain actions and information
17 concerning the conveyance, including confirming that no conflict exists in the chain
18 of title that can be determined from the conveyance documents or other
19 information. If the State Engineer confirms the report of conveyance, he or she



* S B 3 4 1 *

20 must provide notice of confirmation to the person who submitted the report. If the
21 State Engineer determines that the report is deficient, he or she must reject the
22 report and return it to the person who submitted the report with an explanation of
23 what material must be submitted to cure the deficiency. If the State Engineer
24 determines from the report and other documents submitted that there is a conflict in
25 the chain of title, he or she must reject the report and return it to the person who
26 submitted the report with an explanation that a conflict appears to exist, and with a
27 notice that the State Engineer will not take further action with respect to the report
28 until a court of competent jurisdiction has made a final determination as to the
29 conflicting claims to ownership. (NRS 533.386)

30 **Section 1** of this bill requires that the State Engineer, for the purposes of
31 confirming a report of conveyance, to consider as void a conveyance or purported
32 conveyance which is not made by deed, notarized and recorded as required. **Section**
33 **2** of this bill provides that a deed of conveyance that is not recorded as required
34 must be deemed void by the State Engineer for the purposes of confirming a report
35 of conveyance. **Section 3** of this bill prohibits the State Engineer from considering
36 a void conveyance or a void deed in determining whether or not a conflict exists in
37 the chain of title for the purpose of confirming a report of conveyance.

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

1 **Section 1.** NRS 533.382 is hereby amended to read as follows:
2 533.382 **1.** Except as otherwise provided in NRS 533.387,
3 every conveyance of an application or permit to appropriate any of
4 the public waters, a certificate of appropriation, an adjudicated or
5 unadjudicated water right or an application or permit to change the
6 place of diversion, manner of use or place of use of water must be:

7 ~~1-1~~ **(a)** Made by deed;
8 ~~1-2~~ **(b)** Acknowledged in the manner provided in NRS 240.161
9 to 240.168, inclusive; and
10 ~~1-3~~ **(c)** Recorded in the office of the county recorder of each
11 county in which the water is applied to beneficial use and in each
12 county in which the water is diverted from its natural source.

13 **2.** *For the purposes of NRS 533.386, the State Engineer shall*
14 *consider any conveyance or purported conveyance which does not*
15 *meet the requirements of subsection 1 to be void.*

16 **Sec. 2.** NRS 533.383 is hereby amended to read as follows:

17 533.383 **1.** The recording of a deed pursuant to NRS 533.382
18 shall be deemed to impart notice of the contents of the deed to all
19 persons at the time the deed is recorded, and a subsequent purchaser
20 or mortgagee shall be deemed to purchase and take with notice of
21 the contents of the deed.

22 **2.** The deed of ~~1-~~

23 ~~(a) A-1~~ **an** application or permit to appropriate any of the public
24 waters ~~1-~~

25 ~~(b) A-1~~ **, a** certificate of appropriation ~~1-~~



* 5 3 4 1 *

~~(e) An~~, *an* adjudicated or unadjudicated water right ~~+~~ or
~~+(d) An~~ *an* application or permit to change the place of
diversion, manner of use or place of use of water ~~+~~
~~→~~ that has not been recorded as required by NRS 533.382 shall be
deemed void ~~+~~:

*(a) By the State Engineer for the purposes of NRS 533.386;
and*

(b) As against a subsequent purchaser who in good faith and for
valuable consideration purchases the same application, right,
certificate or permit, or any portion thereof, if the subsequent
purchaser first records the deed in compliance with NRS 533.382.

Sec. 3. 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 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 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, the State Engineer 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:

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

(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, the State Engineer shall reject the report of



* S B 3 4 1 *

1 conveyance and return it to the person who submitted it, together
2 with:

3 (a) An explanation of the deficiency; and

4 (b) A notice stating that the State Engineer will not confirm a
5 report of conveyance that has been rejected unless the report is
6 resubmitted with the material required to cure the deficiency. The
7 notice must also include a statement of the provisions of subsection
8 ~~15-1~~ 6.

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

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

16 (b) A notice stating that the State Engineer will not take further
17 action with respect to the report of conveyance until a court of
18 competent jurisdiction has determined the conflicting claims to
19 ownership of the water right and the determination has become final
20 or until a final resolution of the conflicting claims has otherwise
21 occurred. The notice must also include a statement of the provisions
22 of subsection ~~15-1~~ 6.

23 5. *The State Engineer shall not consider, in determining*
24 *whether or not a conflict exists in the chain of title pursuant to*
25 *this section:*

26 (a) *A conveyance which is void pursuant to subsection 2 of*
27 *NRS 533.382; or*

28 (b) *A deed which is void pursuant to subsection 2 of*
29 *NRS 533.383.*

30 6. The State Engineer shall not consider or treat the person to
31 whom:

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

34 (b) A certificate of appropriation;

35 (c) An adjudicated or unadjudicated water right; or

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

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

44 ~~16-1~~ 7. If the State Engineer is notified that a court of
45 competent jurisdiction has entered a judgment confirming



1 ownership of a water right or resolving a conflict in a chain of title,
2 and that the judgment has become final, the State Engineer shall
3 take such administrative action as is appropriate or necessary to
4 conform the records of the Office of the State Engineer with the
5 judgment of the court, including, without limitation, amending or
6 withdrawing a permit or certificate that was previously approved by
7 the State Engineer.

8 **Sec. 4.** This act becomes effective on July 1, 2013.

