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PROPOSED AMENDMENT TO SENATE BILL NO. 76
VERSION #3

(Proposed Changes are Underlined and In Green)

I. Summary of Proposed Amendment

The proposed amendment to Senate Bill No. 76 (S.B. 76):

1. Adds a new section to the bill amending NRS 533.040 to provide that stockwater rights are appurtenant to: (1) Land on which the livestock is watered if the land is owned by the person who has a legal or proprietary interest in the livestock; or (2) Land located contiguous to the land on which the livestock is watered if that contiguous land is owned by the person who has a legal or proprietary interest in the livestock being watered.

The new section also amends NRS 533.040 to provide that such appurtenant water rights may, under certain circumstances, be considered appurtenant to an entire ranch owned by the person who has a legal or proprietary interest in the livestock being watered, instead of appurtenant only to specifically identifiable land within that ranch.

NRS 533.040 is also amended to clarify that the new provisions of subsection 5 of the statute must not be construed to impair any vested stockwater rights or other stockwater rights which existed on or before the effective date of the bill and the statute must not be construed to prevent the transfer of ownership of any of those vested stockwater rights or other existing stockwater rights.

2. Amends NRS 533.503 to expand the types of lands that are subject to the provisions of the bill. Specifically, S.B. 76, currently applies to applications for stockwater permits on certain federally managed lands on which livestock are permitted to graze. The proposed amendment would provide that S.B. 76 applies to all applicants for stockwater permits, including stockwater permits on federally managed lands, lands managed by the State of Nevada, and private lands.

3. Amends NRS 533.503 by deleting references to joint permits. Therefore, it appears that applicants for joint stockwater permits would be required to meet the same requirements as applicants for sole stockwater permits.

4. Amends the definition of "grazing preference" in NRS 533.503 to refer to the "public range" instead of "public grazing lands." This change expands the types of lands included in the definition of "grazing preference."

5. Amends NRS 533.503 by deleting references to "an applicant for a certificate" and instead referring to "a holder of a permit." This change is also made in the new section to chapter 533 of NRS.

6. Adds a new section to chapter 533 of NRS which generally mirrors the provisions of section 1 of S.B. 76 as originally drafted.

The two differences between this new section and section 1 of S.B. 76 as originally drafted are: (1) the new section applies to all applicants for stockwater permits, including stockwater permits on federally managed lands, lands managed by the State of Nevada, and private lands; and (2) rather than referring to "joint permits," the new section refers to an application for a stockwater permit or certificate that is made by two or more applicants.

Further, the two differences between this new section and NRS 533.503, as amended by the proposed amendment, are: (1) the new section authorizes a person who does not own, lease or otherwise possess a legal or proprietary interest in livestock to be watered to apply for a joint stockwater permit with a person who does possess such an interest in the livestock to be watered; and (2) the new section requires applicants for joint stockwater permits, to the extent authorized by law, to contribute to the means of putting the water to beneficial use and contribute to the development of the water rights.

7. Changes the effective dates for the various sections of the bill. Most sections of the bill become effective upon passage and approval.

Section 2 of the bill becomes effective upon passage and approval and remains effective unless, on or before July 1, 2013, a court of competent jurisdiction invalidates all or any part of the section and: (1) the court of last resort upholds that decision; (2) the court of last resort declines to review that decision; or (3) an appeal of that decision is not filed within the time for filing an appeal. If one of the three events listed above occurs on or before July 1, 2013, section 2 of the bill will expire by limitation on the date of that event and section 3 of the bill will become effective. If none of the three events listed above occur on or before July 1, 2013, section 2 of the bill will not expire by limitation pursuant to the bill.

Section 3 of the bill becomes effective on the date that section 2 of the bill expires by limitation, if and only if, section 2 of the bill expires by limitation on or before July 1, 2013.

Section 4 of the bill provides that the provisions of the bill do not apply to stockwater permits or certificates issued before the effective date of the act.

II. Draft of Proposed Amendment

Amend the bill as a whole by renumbering section 1 as sec. 2 and adding a new section designated section 1, following the enacting clause, to read as follows:

Section 1. NRS 533.040 is hereby amended to read as follows:

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

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

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

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

5. For the purposes of this section, a water right acquired for watering livestock by a person who owns, leases or otherwise possesses a legal or proprietary interest in the livestock being watered is appurtenant to:

(a) Land on which the livestock is watered if the land is owned by the person who has a legal or proprietary interest in the livestock; or

(b) Land located contiguous to the land on which the livestock is watered if that contiguous land is owned by the person who has the legal or proprietary interest in the livestock being watered.

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

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

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

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

Amend sec. 2 of the bill by: (1) deleting references to joint permits; and (2) deleting references to “public grazing lands.” Sec. 2 of the bill is amended to read as follows:

Sec. 2. NRS 533.503 is hereby amended to read as follows:

533.503 1. The State Engineer shall not issue {:

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

~~(a) The applicant for the permit is, or if the application is for a joint permit at least one of the applicants for the permit, is legally entitled to place the livestock on the public grazing lands for which the permit is sought {:~~

~~—(b) A} , and:~~

(1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the ~~{public grazing}~~ lands for which the permit is sought; or

(2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the ~~{public grazing}~~ lands for which the permit is sought, and authorization to care for, control and maintain such livestock;

~~(b) If the application is for a joint permit, each applicant for the permit, to the extent authorized by law, agrees to contribute to:~~

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

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

~~(e) The forage serving the beneficial use of the water to be appropriated is not encumbered by an adjudicated grazing preference recognized pursuant to federal law for the benefit of a person who is not listed as an applicant on the application for the permit; and~~

~~(d) other than the applicant for the permit; and~~

(c) The lack of encumbrance required by paragraph ~~{(e)}~~ (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the applicant, or if the application is for a joint permit to at least one of the applicants for the permit. applicant for the permit.

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

(a) ~~The holder of the permit [The applicant for the certificate, or if the application is for a joint certificate at least one of the applicants for the certificate,]~~ who makes satisfactory proof that the water has been beneficially used is legally entitled to place on the ~~land~~ ~~public grazing~~ lands the livestock which have been watered pursuant to the permit ~~[-~~

—2.] , and:

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

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

(b) ~~If the application is for a joint certificate, each applicant for the certificate, to the extent authorized by law, has contributed to:~~

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

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

~~(c) The forage serving the beneficial use of the water that has been beneficially used is not encumbered by an adjudicated grazing preference recognized pursuant to~~

federal law for the benefit of a person ~~who is not listed as an applicant on the application for the certificate; and~~

~~(d)~~ other than the holder of the permit; and

(c) The lack of encumbrance required by paragraph ~~(e)~~ (b) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the ~~applicant, or if the application is for a joint certificate to at least one of the applicants for the certificate.~~ holder of the permit.

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

4. As used in this section, ~~1~~

~~(a)~~ "Grazing preference" means a priority position in the issuance of a permit to graze livestock on the public range. ~~public grazing lands.~~

~~(b)~~ "Public grazing lands" means lands managed by a federal governmental agency on which livestock are authorized to graze, including, without limitation, lands set apart as national forests and lands reserved for other purposes. The term does not include private lands or lands that are held in trust for Indian purposes or that are Indian reservations.

Amend the bill as a whole by renumbering sec. 2 as sec. 4 and adding a new section designated sec. 3, following sec. 2 of the bill, to read as follows:

Sec. 3. Chapter 533 of NRS is hereby amended by adding a new section to read as follows:

1. The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:

(a) The applicant for the permit, or if the application for the permit is made by two or more applicants for the permit at least one of the applicants for the permit, is legally entitled to place the livestock on the lands for which the permit is sought, and:

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

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

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

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

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

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

(d) The lack of encumbrance required by paragraph (c) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental

entity to the applicant, or if the application for the permit is made by two or more applicants to at least one of the applicants for the permit.

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

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

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

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

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

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

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

(c) The forage serving the beneficial use of the water that has been beneficially used is not encumbered by an adjudicated grazing preference recognized pursuant to federal law for the benefit of a person other than the holder of the permit, of if two or more persons hold the permit, the forage is not encumbered by an adjudicated grazing

preference recognized pursuant to federal law for the benefit of a person other than one of those holders; and

(d) The lack of encumbrance required by paragraph (c) is demonstrated by reasonable means, including, without limitation, evidence of a valid grazing permit, other than a temporary grazing permit, that is issued by the appropriate governmental entity to the person who holds the permit, or if the permit is held by two or more persons to at least one of those persons.

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

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

Amend sec. 4 of the bill to read as follows:

Sec. 4. The provisions of this act do not apply to a permit to appropriate water for purposes of watering livestock ~~[on public grazing lands]~~ or a certificate of appropriation based upon such a permit that is issued by the State Engineer before ~~[October 1, 2003,]~~ the effective date of this act regardless of whether such a permit or certificate is transferred after that date.

Amend the bill as a whole by adding a new section designated sec. 5, following sec. 4 of the bill, to read as follows:

Sec. 5. 1. This section and sections 1, 2 and 4 of this act become effective upon passage and approval.

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

(a) The date on which the court of last resort upholds the final decision of the court of competent jurisdiction invalidating all or part of section 2 of this act;

(b) The date on which the court of last resort declines to review the final decision of a court of competent jurisdiction invalidating all or part of section 2 of this act; or

(c) The date of the day following the day on which the time for filing an appeal of the decision of the court of competent jurisdiction invalidating all or part of section 2 of this act expires, if no appeal is filed within that time,

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

3. Section 3 of this act becomes effective on the date on which section 2 of this act expires by limitation, if and only if, section 2 of this act expires by limitation on or before July 1, 2013.

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