

ASSEMBLY BILL NO. 403—ASSEMBLYMEN SHERER, KNECHT,
BROWN, COLLINS, CONKLIN, HETTRICK AND MARVEL

MARCH 17, 2003

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing forfeiture of certain water rights. (BDR 48-818)

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

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

AN ACT relating to water; revising the circumstances that the State Engineer is required to consider in determining whether to grant or deny a request to extend the time necessary to work a forfeiture of certain water rights; and providing other matters properly relating thereto.

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

1 **Section 1.** NRS 534.090 is hereby amended to read as follows:
2 534.090 1. Except as otherwise provided in this section,
3 failure for 5 successive years after April 15, 1967, on the part of the
4 holder of any right, whether it is an adjudicated right, an
5 unadjudicated right, or a permitted right, and further whether the
6 right is initiated after or before March 25, 1939, to use beneficially
7 all or any part of the underground water for the purpose for which
8 the right is acquired or claimed, works a forfeiture of both
9 undetermined rights and determined rights to the use of that water to
10 the extent of the nonuse. For water rights in basins for which the
11 State Engineer keeps pumping records, if the records of the State
12 Engineer indicate at least 4 consecutive years, but less than 5
13 consecutive years, of nonuse of all or any part of such a water right
14 which is governed by this chapter, the State Engineer shall notify
15 the owner of the water right, as determined in the records of the
16 Office of the State Engineer, by registered or certified mail that he



1 has 1 year after the date of the notice in which to use the water right
2 beneficially and to provide proof of such use to the State Engineer
3 or apply for relief pursuant to subsection 2 to avoid forfeiting the
4 water right. If, after 1 year after the date of the notice, proof of
5 beneficial use is not sent to the State Engineer, the State Engineer
6 shall, unless he has granted a request to extend the time necessary to
7 work a forfeiture of the water right, declare the right forfeited within
8 30 days. Upon the forfeiture of a right to the use of ground water,
9 the water reverts to the public and is available for further
10 appropriation, subject to existing rights. If, upon notice by registered
11 or certified mail to the owner of record whose right has been
12 declared forfeited, the owner of record fails to appeal the ruling in
13 the manner provided for in NRS 533.450, and within the time
14 provided for therein, the forfeiture becomes final. The failure to
15 receive a notice pursuant to this subsection does not nullify the
16 forfeiture or extend the time necessary to work the forfeiture of a
17 water right.

18 2. The State Engineer may, upon the request of the holder of
19 any right described in subsection 1, extend the time necessary to
20 work a forfeiture under that subsection if the request is made before
21 the expiration of the time necessary to work a forfeiture. The State
22 Engineer may grant, upon request and for good cause shown, any
23 number of extensions, but a single extension must not exceed 1 year.
24 In determining whether to grant or deny a request, the State
25 Engineer shall, among other reasons, consider:

26 (a) Whether the holder has shown good cause for his failure to
27 use all or any part of the water beneficially for the purpose for
28 which his right is acquired or claimed;

29 (b) The unavailability of water to put to a beneficial use which is
30 beyond the control of the holder;

31 (c) Any economic conditions or natural disasters which made
32 the holder unable to put the water to that use; ~~and~~

33 (d) *Any prolonged period in which precipitation in the basin
34 where the water right is located is below the average for that basin
35 or in which indices that measure soil moisture show that a deficit
36 in soil moisture has occurred in that basin; and*

37 (e) Whether the holder has demonstrated efficient ways of using
38 the water for agricultural purposes, such as center-pivot
39 irrigation.

40 The State Engineer shall notify, by registered or certified mail, the
41 owner of the water right, as determined in the records of the Office
42 of the State Engineer, of whether he has granted or denied the
43 holder's request for an extension pursuant to this subsection.

44 3. If the failure to use the water pursuant to subsection 1 is
45 because of the use of center-pivot irrigation before July 1, 1983, and



1 such use could result in a forfeiture of a portion of a right, the State
2 Engineer shall, by registered or certified mail, send to the owner of
3 record a notice of intent to declare a forfeiture. The notice must
4 provide that the owner has at least 1 year from the date of the notice
5 to use the water beneficially or apply for additional relief pursuant
6 to subsection 2 before forfeiture of his right is declared by the State
7 Engineer.

8 4. A right to use underground water whether it is vested or
9 otherwise may be lost by abandonment. If the State Engineer, in
10 investigating a ground water source, upon which there has been a
11 prior right, for the purpose of acting upon an application to
12 appropriate water from the same source, is of the belief from his
13 examination that an abandonment has taken place, he shall so state
14 in his ruling approving the application. If, upon notice by registered
15 or certified mail to the owner of record who had the prior right, the
16 owner of record of the prior right fails to appeal the ruling in the
17 manner provided for in NRS 533.450, and within the time provided
18 for therein, the alleged abandonment declaration as set forth by the
19 State Engineer becomes final.

20 **Sec. 2.** This act becomes effective on July 1, 2003.

