

IN THE SUPREME COURT OF THE STATE OF NEVADA

PYRAMID LAKE PAIUTE TRIBE OF  
INDIANS,  
Appellant,  
vs.  
STATE ENGINEER, THE STATE OF  
NEVADA, DEPARTMENT OF  
CONSERVATION AND NATURAL  
RESOURCES, DIVISION OF WATER  
RESOURCES AND JACKRABBIT  
PROPERTIES, LLC, A LIMITED  
LIABILITY COMPANY,  
Respondents.

No. 55437

**FILED**

SEP 20 2011

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *Angela*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order resolving a challenge to the State Engineer's decision in a water rights action. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

Appellant Pyramid Lake Paiute Tribe filed a petition for judicial review, contending that respondent State Engineer improperly granted respondent Jackrabbit Properties, LLC's application to amend its groundwater permit. Specifically, the Tribe contended that pursuant to NRS 534.090, Jackrabbit had forfeited its groundwater rights because it had failed for five consecutive years to put the water to beneficial use. As explained below, we affirm the district court's order denying the Tribe's petition for judicial review.

The Legislature's clarification of NRS 534.090 applies retroactively

The State Engineer's long-standing policy has been to interpret NRS 534.090's use of the phrase "permitted right" to mean "certificated right"—i.e., a right that originated via the permitting system

but which has been perfected by putting the water to beneficial use. This interpretation, the State Engineer maintains, was meant to harmonize NRS 534.090's practical application with the State Engineer's authority under NRS 533.380 to grant a permit holder 10 years within which to put groundwater rights to beneficial use.


During the 2011 legislative session, the Legislature amended NRS 534.090 to expressly reflect the State Engineer's long-standing interpretation of it. See 2011 Nev. Stat., ch. 113, § 3, at \_\_\_\_\_. In amending NRS 534.090, the Legislature stated that the amendment was "intended to clarify rather than change the existing application of NRS 534.090 relating to the forfeiture of water rights." Id. § 6(2).

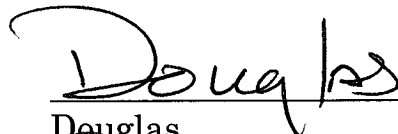
By stating that the amendment was meant to "clarify rather than change" NRS 534.090's application, we conclude that the Legislature meant for the new version of NRS 534.090 to have retroactive effect. See Fernandez v. Fernandez, 126 Nev. \_\_\_, \_\_\_ n.6, 222 P.3d 1031, 1035 n.6 (2010) (indicating that a legislative amendment meant to clarify, rather than change, a statute should be applied retroactively); 1A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction § 22.34 (7th ed. 2009) ("Where an amendment clarifies existing law but does not contravene previous constructions of the law, the amendment may be deemed curative, remedial and retroactive, especially where the amendment is enacted during a controversy over the meaning of the law.").

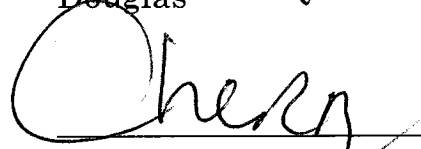
Here, although five consecutive years elapsed during which Jackrabbit failed to put its groundwater rights to beneficial use, its permit was still in good standing. Consistent with the Legislature's objective, we

therefore conclude that Jackrabbit's groundwater permit was not subject to NRS 534.090's forfeiture provision. Accordingly, we

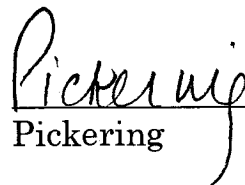
ORDER the judgment of the district court AFFIRMED.

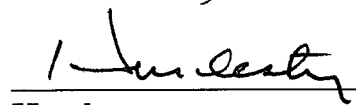
  
\_\_\_\_\_, C.J.  
Saitta

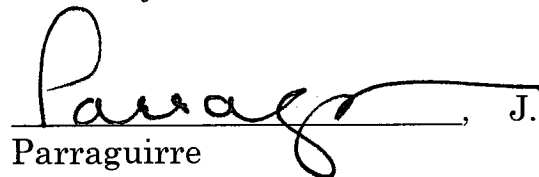
  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Janet J. Berry, District Judge  
William E. Nork, Settlement Judge  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP  
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Attorney General/Reno  
Washoe District Court Clerk