

ASSEMBLY BILL NO. 209—ASSEMBLYMAN OSCARSON

PREFILED FEBRUARY 13, 2017

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions governing the forfeiture of water rights. (BDR 48-308)

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

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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; requiring, under certain circumstances, the State Engineer to extend the time necessary to work a forfeiture of certain water rights; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides, with limited exception, that the holder of a water right
2 forfeits the right if the holder fails for 5 successive years to use beneficially all or
3 any part of the underground water for the purpose for which the right is acquired or
4 claimed. Existing law authorizes the holder of a water right to request an extension
5 to work the forfeiture and the State Engineer may grant an extension for good cause
6 shown if the request is made before the expiration of the time necessary to work the
7 forfeiture. (NRS 534.090) This bill requires the State Engineer to extend the time
8 necessary to work a forfeiture if the request is made before the expiration of the
9 time necessary to work the forfeiture and the water right authorizes the holder of
10 the right to use groundwater in a basin: (1) where the withdrawals consistently
11 exceed the perennial yield; or (2) that has been designated as a critical management
12 area.

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 right for which a certificate has been issued



1 pursuant to NRS 533.425, and further whether the right is initiated
2 after or before March 25, 1939, to use beneficially all or any part of
3 the underground water for the purpose for which the right is
4 acquired or claimed, works a forfeiture of both undetermined rights
5 and determined rights to the use of that water to the extent of the
6 nonuse. If the records of the State Engineer or any other documents
7 specified by the State Engineer indicate at least 4 consecutive years,
8 but less than 5 consecutive years, of nonuse of all or any part of a
9 water right which is governed by this chapter, the State Engineer
10 shall notify the owner of the water right, as determined in the
11 records of the Office of the State Engineer, by registered or certified
12 mail that the owner has 1 year after the date of the notice in which to
13 use the water right beneficially and to provide proof of such use
14 to the State Engineer or apply for relief pursuant to subsection 2 to
15 avoid forfeiting the water right. If, after 1 year after the date of the
16 notice, proof of resumption of beneficial use is not filed in the
17 Office of the State Engineer, the State Engineer shall, unless
18 the State Engineer has granted a request to extend the time
19 necessary to work a forfeiture of the water right, declare the right
20 forfeited within 30 days. Upon the forfeiture of a right to the use of
21 groundwater, the water reverts to the public and is available for
22 further appropriation, subject to existing rights. If, upon notice by
23 registered or certified mail to the owner of record whose right has
24 been declared forfeited, the owner of record fails to appeal the
25 ruling in the manner provided for in NRS 533.450, and within the
26 time provided for therein, the forfeiture becomes final. The failure
27 to receive a notice pursuant to this subsection does not nullify the
28 forfeiture or extend the time necessary to work the forfeiture of a
29 water right.

30 2. ~~¶The~~ *Except as otherwise provided in subsection 3, the*
31 State Engineer may, upon the request of the holder of any right
32 described in subsection 1, extend the time necessary to work a
33 forfeiture under that subsection if the request is made before the
34 expiration of the time necessary to work a forfeiture. ~~¶The~~ *Except*
35 *as otherwise provided in subsection 3, the* State Engineer may
36 grant, upon request and for good cause shown, any number of
37 extensions, but a single extension must not exceed 1 year. ~~¶An~~
38 *Except as otherwise provided in subsection 3, in* determining
39 whether to grant or deny a request, the State Engineer shall, among
40 other reasons, consider:

41 (a) Whether the holder has shown good cause for the holder's
42 failure to use all or any part of the water beneficially for the purpose
43 for which the holder's right is acquired or claimed;

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



1 (c) Any economic conditions or natural disasters which made
2 the holder unable to put the water to that use;

3 (d) Any prolonged period in which precipitation in the basin
4 where the water right is located is below the average for that basin
5 or in which indexes that measure soil moisture show that a deficit in
6 soil moisture has occurred in that basin; **and**

7 ~~(e) Whether a groundwater management plan has been~~
8 ~~approved for the basin pursuant to NRS 534.037; and~~

9 ~~—(f)~~ Whether the holder has demonstrated efficient ways of using
10 the water for agricultural purposes, such as center-pivot irrigation.

11 ➔ The State Engineer shall notify, by registered or certified mail,
12 the owner of the water right, as determined in the records of the
13 Office of the State Engineer, of whether the State Engineer has
14 granted or denied the holder's request for an extension pursuant to
15 this subsection. If the State Engineer grants an extension pursuant to
16 this subsection and, before the expiration of that extension, proof of
17 resumption of beneficial use or another request for an extension is
18 not filed in the Office of the State Engineer, the State Engineer shall
19 declare the water right forfeited within 30 days after the expiration
20 of the extension granted pursuant to this subsection.

21 3. *The State Engineer shall, upon the request of the holder of*
22 *any right described in subsection 1, extend the time necessary to*
23 *work a forfeiture under that subsection if:*

24 (a) *The request is made before the expiration of the time*
25 *necessary to work a forfeiture; and*

26 (b) *The right authorizes the holder to use underground water*
27 *from a basin:*

28 (1) *Where withdrawals of groundwater consistently exceed*
29 *the perennial yield of the basin; or*

30 (2) *That has been designated as a critical management area*
31 *by the State Engineer pursuant to subsection 7 of NRS 534.110.*

32 ➔ *Any number of extensions may be granted to the holder of a*
33 *right pursuant to this subsection. An extension that is granted*
34 *pursuant to this subsection may exceed 1 year.*

35 4. If the failure to use the water pursuant to subsection 1 is
36 because of the use of center-pivot irrigation before July 1, 1983, and
37 such use could result in a forfeiture of a portion of a right, the State
38 Engineer shall, by registered or certified mail, send to the owner of
39 record a notice of intent to declare a forfeiture. The notice must
40 provide that the owner has at least 1 year after the date of the notice
41 to use the water beneficially or apply for additional relief pursuant
42 to subsection 2 before forfeiture of the owner's right is declared by
43 the State Engineer.

44 ~~(4)~~ 5. A right to use underground water whether it is vested or
45 otherwise may be lost by abandonment. If the State Engineer, in



1 investigating a groundwater source, upon which there has been a
2 prior right, for the purpose of acting upon an application to
3 appropriate water from the same source, is of the belief from his or
4 her examination that an abandonment has taken place, the State
5 Engineer shall so state in the ruling approving the application. If,
6 upon notice by registered or certified mail to the owner of record
7 who had the prior right, the owner of record of the prior right fails to
8 appeal the ruling in the manner provided for in NRS 533.450, and
9 within the time provided for therein, the alleged abandonment
10 declaration as set forth by the State Engineer becomes final.

11 **Sec. 2.** This act becomes effective on July 1, 2017.

