

Amendment No. 350

Assembly Amendment to Assembly Bill No. 209	(BDR 48-308)
Proposed by: Assembly Committee on Natural Resources, Agriculture, and Mining	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EMR/HAC



Date: 4/21/2017

A.B. No. 209—Revises provisions governing the forfeiture of water rights.
(BDR 48-308)



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;~~ revising the criteria that the State Engineer must consider in determining whether to extend the time necessary to work a forfeiture; authorizing certain extensions to be for a period of not more than 3 years; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides, with limited exception, that the holder of a water right forfeits the right if the holder fails for 5 successive years to use beneficially all or any part of the underground water for the purpose for which the right is acquired or claimed. Existing law authorizes the holder of a water right to request an extension to work the forfeiture and the State Engineer may grant an extension for good cause shown if the request is made before the expiration of the time necessary to work the forfeiture. Existing law also provides that a single extension must not exceed 1 year. (NRS 534.090)

This bill revises the criteria the State Engineer must consider to determine whether to grant or deny a request to extend the time necessary to work a forfeiture. This bill ~~requires~~ also authorizes the State Engineer to extend the time necessary to work a forfeiture ~~if the request is made before the expiration of the time necessary to work the forfeiture and the water right authorizes the holder of the right to use groundwater~~ for a period of not more than 3 years in a basin: (1) where the withdrawals consistently exceed the perennial yield; or (2) that has been designated as a critical management area.

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

Section 1. NRS 534.090 is hereby amended to read as follows:

534.090 1. Except as otherwise provided in this section, failure for 5 successive years after April 15, 1967, on the part of the holder of any right, whether

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

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

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

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

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

41 (d) ~~Any prolonged period in which precipitation in the basin where~~ *Whether*
42 *the water right is located is below the average for that basin or in which indexes*
43 *that measure soil moisture show that a deficit in soil moisture has occurred in that*
44 *basin; and in a basin within a county under a declaration of drought by the*
45 *Governor, the United States Secretary of Agriculture or the President of the*
46 *United States;*

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

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

51 (f) *Whether the holder has demonstrated efforts to conserve water which*
52 *have resulted in a reduction in water consumption; and*

(g) Whether the water right is located in a basin that has been designated as a critical management area by the State Engineer pursuant to subsection 7 of NRS 534.110 or where withdrawals of groundwater consistently exceed the perennial yield of the basin.

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

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

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

~~(b) The right authorizes the holder to use underground water from a basin;~~

~~(1) grants an extension pursuant to subsection 1 in a basin;~~

(a) Where withdrawals of groundwater consistently exceed the perennial yield of the basin; or

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

↪ ~~Any~~ a single extension must not exceed 3 years, but any number of extensions may be granted to the holder of such a right . ~~pursuant to this subsection. An extension that is granted pursuant to this subsection may exceed 1 year.~~

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

~~4.4~~ 5. A right to use underground water whether it is vested or otherwise may be lost by abandonment. If the State Engineer, in investigating a groundwater source, upon which there has been a prior right, for the purpose of acting upon an application to appropriate water from the same source, is of the belief from his or her examination that an abandonment has taken place, the State Engineer shall so state in the ruling approving the application. If, upon notice by registered or certified mail to the owner of record who had the prior right, the owner of record of the prior right fails to appeal the ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the alleged abandonment declaration as set forth by the State Engineer becomes final.

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