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A.B. 51

ASSEMBLY BILL NO. 51—COMMITTEE ON NATURAL
RESOURCES, AGRICULTURE, AND MINING

(ON BEHALF OF THE DIVISION OF WATER RESOURCES
OF THE STATE DEPARTMENT OF
CONSERVATION AND NATURAL RESOURCES)

PREFILED NOVEMBER 18, 2018

Referred to Committee on Natural Resources,
Agriculture, and Mining

SUMMARY—Revises provisions governing the management of
water. (BDR 48-213)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§ 4)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 the State Engineer to adopt
regulations relating to the conjunctive management of
groundwater and surface water; authorizing the State
Engineer to impose certain special assessments related to
a program for the conjunctive management of
groundwater and surface water; providing that certain
water rights are not subject to abandonment or forfeiture;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law declares that it is the policy of this State to manage conjunctively
2 all waters of this State, regardless of the source of water. (NRS 533.024) **Section 3**
3 of this bill requires the State Engineer to adopt regulations related to the
4 conjunctive management of groundwater and surface water. The regulations may
5 include, without limitation: (1) requirements or guidelines for establishing
6 mitigation plans; (2) the creation of a program for the conjunctive management of
7 groundwater and surface water in a particular hydrographic basin to mitigate
8 conflicts between groundwater and surface water users; and (3) any other provision
9 necessary to conjunctively manage groundwater and surface water, determine the



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amount of conflict between groundwater and surface water users or resolve a conflict between groundwater and surface water users.

Section 4 of this bill authorizes the State Engineer to levy certain special assessments related to a program for the conjunctive management of groundwater and surface water. **Section 7** of this bill provides that the partial abatements of property taxes does not apply to any such special assessment, consistent with other assessments levied against groundwater and surface water users.

Section 5 of this bill provides that a right to groundwater or surface water that is not being used because of a program for the conjunctive management of groundwater or surface water is not subject to forfeiture or abandonment for as long as the program is in effect.

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

Section 1. Chapter 533 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. *As used in sections 2 to 5, inclusive, of this act, "groundwater user" includes, without limitation, an owner of a domestic well.*

Sec. 3. 1. *The State Engineer shall adopt regulations related to the conjunctive management of groundwater and surface water. In adopting such regulations, the State Engineer must recognize existing uses of water while protecting water rights that are senior in priority.*

2. The regulations adopted pursuant to this section may include, without limitation:

(a) Requirements or guidelines for establishing a mitigation plan to address conflicts between groundwater and surface water users.

(b) The creation of a program for the conjunctive management of groundwater and surface water in a hydrographic basin in the State in order to mitigate conflicts between groundwater and surface water users.

(c) Any other provision that the State Engineer finds necessary to conjunctively manage groundwater and surface water, determine the amount of conflict between groundwater and surface water users or resolve a conflict between groundwater and surface water users.

Sec. 4. 1. *If the State Engineer creates a program for the conjunctive management of groundwater and surface water in a hydrographic basin, the State Engineer:*

(a) Is not required to curtail a groundwater user who has a conflict with a surface water user whose water right is senior in priority if the State Engineer finds that curtailment will not be



1 *effective to provide water for the beneficial use of the surface*
2 *water user.*

3 *(b) May require a groundwater user to furnish replacement*
4 *water to a surface water user so long as the replacement water is*
5 *of sufficient quality.*

6 *(c) May levy a special assessment annually or at such times as*
7 *needed against the taxable property of a groundwater user for the*
8 *purpose of providing compensation for a conflict or injurious*
9 *depletion of a surface water user whose water right is senior in*
10 *priority to the groundwater user's water right or protectable*
11 *interest in a domestic well, as applicable. Any such special*
12 *assessment must be proportionate to the amount of conflict caused*
13 *by the groundwater user to the surface water user whose water*
14 *right is senior in priority.*

15 *(d) May levy a special assessment annually or at such times as*
16 *needed against the taxable property of water users in the basin to*
17 *pay for the expenses of administering the program.*

18 *2. Any charge or fee levied pursuant to subsection 1 must be:*

19 *(a) Collected on the tax roll in the same manner, by the same*
20 *persons, and at the same time as the county's general taxes. Such*
21 *charge or fee is a lien against the property.*

22 *(b) Accounted for separately and may only be used for the*
23 *purposes described in subsection 1.*

24 *Sec. 5. If the State Engineer creates a program for the*
25 *conjunctive management of groundwater and surface water in a*
26 *hydrographic basin, a right to groundwater or surface water that*
27 *is not being used because of the program is not subject to a*
28 *determination of abandonment or forfeiture for as long as the*
29 *program is in effect.*

30 *Sec. 6. NRS 534.090 is hereby amended to read as follows:*

31 *534.090 1. Except as otherwise provided in this section *
32 *and section 5 of this act, failure for 5 successive years after*
33 *April 15, 1967, on the part of the holder of any right, whether it is*
34 *an adjudicated right, an unadjudicated right or a right for which a*
35 *certificate has been issued pursuant to NRS 533.425, and further*
36 *whether the right is initiated after or before March 25, 1939, to use*
37 *beneficially all or any part of the underground water for the purpose*
38 *for which the right is acquired or claimed, works a forfeiture of both*
39 *undetermined rights and determined rights to the use of that water to*
40 *the extent of the nonuse.*

41 *2. If the records of the State Engineer or any other documents*
42 *obtained by or provided to the State Engineer indicate 4 or more*
43 *consecutive years of nonuse of all or any part of a water right which*
44 *is governed by this chapter:*



(a) The State Engineer shall notify the owner of the water right, as determined in the records of the Office of the State Engineer, by registered or certified mail of the nonuse and that the owner has 1 year after the date of the notice of nonuse in which to use the water right beneficially and to provide proof of such use to the State Engineer or apply for relief pursuant to subsection 3 to avoid forfeiting the water right.

(b) If, after 1 year after the date of the notice of nonuse pursuant to paragraph (a), proof of resumption of beneficial use is not filed in the Office of the State Engineer, the State Engineer shall, unless the State Engineer has granted a request to extend the time necessary to work a forfeiture of the water right, send a final notice to the owner of the water right, as determined in the records of the Office of the State Engineer, by registered or certified mail, that the water right is held for forfeiture. If the owner of the water right, within 30 days after the date of such final notice, fails to file the required proof of resumption of beneficial use or an application for an extension of time to prevent forfeiture, the State Engineer shall declare the right, or the portion of the right not returned to beneficial use, forfeited. The State Engineer shall send notice of the declaration of forfeiture, by registered or certified mail, to the owner of record, as determined in the records of the Office of the State Engineer, of the water right that has been declared forfeited.

(c) If, after receipt of a notice of the declaration of forfeiture pursuant to paragraph (b), the owner of record of the water right fails to appeal the ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the forfeiture becomes final. Upon the forfeiture of the water right, the water reverts to the public and is available for further appropriation, subject to existing rights.

3. The State Engineer may, upon the request of the holder of any right described in subsection 1, extend the time necessary to work a forfeiture under subsection 2 if the request is made before the expiration of the time necessary to work a forfeiture. Except as otherwise provided in subsection 4, the State Engineer may grant, upon request and for good cause shown, any number of extensions, but a single extension must not exceed 1 year. In determining whether to grant or deny a request, the State Engineer shall, among other reasons, consider:

(a) Whether the holder has submitted proof and evidence that the holder is proceeding in good faith and with reasonable diligence to resume use of the water beneficially for the purpose for which the holder's right is acquired or claimed;

(b) The number of years during which the water has not been put to the beneficial use for which the right is acquired or claimed;



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

(d) Whether the water right is located in a basin within a county under a declaration of drought by the Governor, United States Secretary of Agriculture or the President of the United States;

(e) Whether the holder has demonstrated efforts to conserve water which have resulted in a reduction in water consumption;

(f) 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;

(g) The date of priority of the water right as it relates to the potential curtailment of water use in the basin;

(h) The availability of water in the basin, including, without limitation, whether withdrawals of water consistently exceed the perennial yield of the basin; and

(i) Any orders restricting use or appropriation of water in 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 send a final notice to the owner of the water right, by registered or certified mail, that the water right will be declared forfeited if the owner of the water right fails to file the required proof of resumption of beneficial use or an application for an extension of time to prevent forfeiture within 30 days after the date of the final notice. If the owner of the water right fails to file the required proof of resumption of beneficial use or an application for an extension of time to prevent forfeiture within 30 days after the date of such final notice, the State Engineer shall declare the water right, or the portion of the right not returned to beneficial use, forfeited.

4. If the State Engineer grants an extension pursuant to subsection 1 in a basin:

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

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

➔ a single extension must not exceed 3 years, but any number of extensions may be granted to the holder of such a right.



5. The failure to receive a notice pursuant to subsection 2 or 3 does not nullify the forfeiture or extend the time necessary to work the forfeiture of a water right.

6. 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. 7. NRS 361.47111 is hereby amended to read as follows:
361.47111 "Ad valorem taxes" does not include any assessments levied pursuant to NRS 533.190, 533.285 or 534.040 ~~or~~ *or section 4 of this act.*

Sec. 8. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 9. This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act; and

2. On July 1, 2019, for all other purposes.

