

**Department of Conservation and Natural Resources
Division of Water Resources
BDR Number: 21A7052376**

This bill seeks to amend Chapter 533 of the Nevada Revised Statutes to establish a water banking program to allow for the banking and leasing of water rights with an irrigation manner of use.

Proposed bill language

Chapter 533 of the NRS is hereby amended by adding thereto the provisions set forth as sections 1 to 23 of this act.

NEVADA WATER BANKING ACT

Part 1. General Provisions

Sec. 1 *Title. This chapter is known as the “Nevada Water Banking Act.”*

Sec. 2 *Definitions. As used in this chapter:*

(1) *“Water Bank Applicant” means:*

(a) a record holder of a perfected water right applying for State Engineer approval of a statutory water bank under Sec. 6 to Sec. 11 of this act, Statutory Water Banks; or

(b) a public entity applying for State Engineer approval of a contract water bank under Sec. 12 to Section 16 of this act, Contract Water Banks.

(2) *“Water Bank Application” means an application submitted to the State Engineer to approve a water bank pursuant to either Sec. 7 or Sec. 13 of this act.*

(3) *“Approved water banking change application” means a change application that the state engineer approves to authorize a water right holder to deposit a water right in a water bank pursuant to this Act and NRS 533.360.*

(4) *“Banked water right” means a water right, or a portion of a water right, deposited in a water bank that the state engineer has authorized for use in a water bank through an approved change application.*

(5) *“Borrower” means a person seeking to use a banked water right within a water bank’s service area.*

(6) *“Contract water bank” means a water bank created pursuant to Sec. 12 to Sec. 16 of this act, Contract Water Banks.*

(7) *“Delivery request” means a request to use a banked water right made by a borrower in accordance with a water bank’s policies approved under the water bank’s application.*

(8) *“Deposit” means depositing a banked water right for use within the service area of a water bank.*

(9) *“Depositor” means a person seeking to deposit a water right in a water bank.*

(10) *“Hereafter use” means the conditions of use the state engineer authorizes for a banked*

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water right during the term of an approved change application.

(11) “Heretofore use” means the authorized conditions of use that were in effect before the state engineer approved a change application authorizing new conditions for the use of a banked water right.

(12) “Loaned water rights” means a banked water right that is used pursuant to an approved delivery request.

(13) “Perfected water right” means a water right that has had all requirements of a water right permit for placing the water to beneficial use to completion as evidenced by:

(a) a decree; or

(b) a certificate of appropriation.

(14) “Public entity” as used in this Act means:

(a) the state;

(b) a state agency;

(c) a political subdivision of the state; or

(d) an agency of a political subdivision of the state.

↪A public entity does not include the United States or an agency of the United States.

(15) “Reporting year” means January 1 through December 31.

(16) “Service area” means the geographic area where a water bank is approved to operate and operates.

(17) “State engineer” means the state engineer appointed under NRS 532.020.

(18) “Statutory water bank” means a water bank created pursuant to Sec. 6 to Sec. 11 of this act, Statutory Water Banks.

(19) “Water bank” means a contract water bank or a statutory water bank.

(20) “Water banking website” means a website overseen by the State Engineer in accordance with Sec. 3 of this act.

Sec. 3 Notice – Website.

(1) A notice required under this chapter shall be posted in accordance with Sec. 8(3) and Sec. 18(1) of this act and to a water bank’s website, unless otherwise specified.

(2) The State Engineer may create and oversee a website for the purpose of making water banking information available to the public.

Sec. 4 Objectives of water banks. *The objectives in creating a water bank are to:*

(1) promote:

(a) the optimal use of the public’s water;

(b) transparency and access to water markets;

(c) temporary, flexible, and low-cost water transactions between water users; and

(d) Nevada’s agricultural economy by providing access to water resources and income for Nevada’s agricultural industry; and

(2) facilitate:

(a) robust and sustainable agricultural production while meeting growing municipal and industrial water demands, such as following arrangements;

(b) water quality standards;

(c) water rights administration and distribution; and

(d) a healthy and resilient natural environment.

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Sec. 5 *Scope.* Nothing in this chapter prevents a person from entering into an agreement regarding the use of a water right that differs from the requirements of this chapter, except that only a water bank approved under this act may avail itself of the statutory provisions that apply to a water bank.

Part 2. Statutory Water Banks

Sec. 6 *Approval of statutory water bank.*

(1) The State Engineer shall approve an application to create a statutory water bank that satisfies this section.

(2) As a condition of approval, a statutory water bank is subject to this act.

(3) A statutory water bank may be operated in a manner that does not strictly conform to priority of rights.

Sec. 7 *Statutory water bank application.*

(1) A record holder, other than the United States or an agency of the United States, of a perfected water right may request approval for a proposed statutory water bank if the place of use and point of diversion for the water bank applicant's water right are encompassed within the proposed service area of the proposed statutory water bank and the water bank applicant files a water bank application with the State Engineer that includes the following:

- (a) the name of the statutory water bank;
- (b) the mailing address for the statutory water bank;
- (c) the type of legal entity recognized under Nevada law that constitutes the statutory water bank;
- (d) a proposed service area map for the statutory water bank;
- (e) whether the statutory water bank will accept deposits of surface water rights or groundwater rights, provided that:
 - (i) a statutory water bank may not accept deposits of both surface water rights and groundwater rights; and
 - (ii) the water bank applicant's perfected water right is of the type accepted by the statutory water bank;
- (f) a copy of the statutory water bank's governing documents that specify:
 - (i) the number of members of the governing body, which may not be an even number;
 - (ii) the qualifications for governing members, including terms and election or appointment procedures; and
 - (iii) the initial governing members' names, telephone numbers, and post office addresses;
- (g) a confirmation that the water bank applicant satisfies the criteria listed in Subsection (1)(e)(ii);
- (h) procedures that describe how the statutory water bank will:
 - (i) determine and fund the water bank's administrative costs;
 - (ii) design, facilitate, and conduct transactions between borrowers and depositors for the use of a banked water right; and
 - (iii) accept, reject, and manage banked water rights, including:
 - (A) what information a depositor shall provide to inform the statutory

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- water bank, the state engineer, or any other distributing entity regarding the feasibility of using the water right within the statutory water bank's designated service area;*
- (B) how a potential depositor is to work with the statutory water bank to jointly file a change application seeking authorization from the state engineer to deposit a water right within the statutory water bank;*
- (C) conditions for depositing a water right with the statutory water bank;*
- (D) how payments to depositors are determined; and*
- (E) under what conditions a depositor may use a water right at the heretofore place of use pursuant to Sec. 19(4) of this act;*
- (iv) accept, review, and approve delivery requests, including:*
- (A) deadlines for submitting a delivery request to the statutory water bank;*
- (B) a cost or fee associated with submitting a delivery request and how that cost or fee is to be applied or used by the statutory water bank;*
- (C) what information a borrower is to include on a delivery request to sufficiently inform the statutory water bank, state engineer, or another distributing entity whether the delivery request is feasible within the statutory water bank's designated service area;*
- (D) any notice and comment procedures for notifying other water users of the delivery request;*
- (E) the criteria the statutory water bank will use to value delivery requests;*
- (F) how the statutory water bank will inform water users who have submitted a delivery request if the delivery request is approved or denied, the reasons for denial if denied, and any applicable conditions if approved;*
- (G) appeal or grievance procedures, if any, for a borrower seeking to challenge a denial of a delivery request, including identifying who has the burden in an appeal and the standards of review;*
- (H) how the statutory water bank will determine prices for the use of loaned water rights; and*
- (I) how the statutory water bank will coordinate with the state engineer to facilitate distribution of approved delivery requests;*
- (v) how the statutory water bank will ensure that the aggregate amount of loaned water rights during a calendar year does not exceed the total sum of the banked water rights within the statutory water bank; and*
- (vi) how the statutory water bank will resolve complaints regarding the statutory water bank's operations;*
- (i) the process that the statutory water bank will follow if the statutory water bank terminates, dissolves, or if the State Engineer revokes the statutory water bank's permission to operate pursuant to this act, including how the statutory water bank will return banked water rights to depositors and how the statute water bank will return any amounts owing to depositors; and*
- (j) a signed declaration or affidavit from at least two governing members of the statutory water bank affirming that:*

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- (i) the information submitted is correct;*
- (ii) as a condition for permission to operate, the statutory water bank may not discriminate between the nature of use, depositors, or borrowers;*
- (iii) the statutory water bank shall comply with the conditions of an approved changed application for a banked water right; and*
- (iv) the statutory water bank shall report to the state engineer known violations of approved change applications.*

(2) The State Engineer may prepare a form or online water bank application for a water bank applicant to use in submitting an application to the State Engineer under this part.

Sec. 8 *Action by State Engineer on statutory water bank applications.*

(1) Upon receipt of an application under Sec. 7 of this act, the State Engineer shall record the date the water bank application is received.

(2) The State Engineer shall:

- (a) examine a water bank application for completeness to determine whether the application satisfies this part;*
- (b) review a water bank application to determine whether it meets the objectives of a water bank described in Sec. 4 of this act;*
- (c) consider a water bank application complete if the application satisfies the requirements of this part; and*
- (d) notify the water bank applicant of any additional information or changes needed to process the water bank application.*

(3) Within 30 days of the date the State Engineer determines that a water bank application is complete, the State Engineer shall post notice of the water bank application pursuant to Sec. 3 of this act.

(4) The notice required by Subsection (3) shall state:

- (a) that a water bank application to create a statutory water bank has been filed with the State Engineer;*
- (b) where an interested party may obtain a copy of the water bank application and any additional information related to the application; and*
- (c) the date, time, and place of the public meeting required by Sec. 9 of this act.*

Sec. 9 *Public meeting -- Comments.*

(1) On the date indicated in the notice posted under Sec. 8(3) of this act, the State Engineer shall hold a public meeting to:

- (a) inform water users within the service area of the proposed statutory water bank; and*
- (b) receive comments from water users regarding the water bank application.*

(2) The State Engineer shall accept public comments for a period of time no less than 30 days after the adjournment of the public meeting.

(3) The State Engineer shall review public comments when reviewing the proposed statutory water bank's application, but submitting a comment does not create a right of appeal of the State Engineer's decision under NRS 533.450, nor is the State Engineer required to address how or whether public comments impacted the State Engineer's decision.

(4) A statutory water bank may review public comments and comments from the State Engineer before a final decision is made by the State Engineer. If the statutory water bank desires to make changes to the statutory water bank's application, the statutory water bank shall notify the State

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Engineer in writing before the State Engineer takes action on the application that the statutory water bank will submit a revised application following the same process that governs the filing and review of the original application for a statutory water bank under this chapter.

Sec. 10 ***Review of statutory bank application.***

- (1) After complying with Sec. 8 to Sec. 9 of this act, the State Engineer shall approve a water bank application if the water bank application satisfies Sec. 7 of this act, which is to be liberally interpreted by the State Engineer to facilitate the objectives described in.*
- (2) In approving a water bank application, the State Engineer shall:*
 - (a) issue an order approving the statutory water bank;*
 - (b) approve persons to serve as the initial members of the governing body in accordance with the proposed statutory water bank's structure and Sec. 7 of this act; and*
 - (c) publish the approved water bank application on the water banking website.*
- (3) If the State Engineer denies a water bank application, the State Engineer shall issue a written explanation to the water bank applicant that sets forth the reason for denial.*

Sec. 11 ***Amending application.***

- (1) After the State Engineer approves a statutory water bank's application under this part, the statutory water bank may seek to amend the statutory water bank's application by filing a description of the proposed amendment with the State Engineer. The State Engineer shall follow the procedures of Sec. 7 to Sec. 10 of this act to approve an amendment to a statutory water bank's application.*
- (2) An amendment approved by the State Engineer becomes effective on the first day of the next reporting year.*

Part 3. Contract Water Banks

Sec. 12 ***Approval of contract water bank.***

- (1) The State Engineer shall approve an application to create a contract water bank that satisfies this part.*
- (2) As a condition of approval, a contract water bank is subject to this Act.*
- (3) A contract water bank may be operated in a manner that does not strictly conform to priority of rights.*

Sec. 13 ***Contract water bank application.***

- (1) A public entity may seek to have a contract for water use approved as a contract water bank under this chapter by submitting a water bank application to the State Engineer that meets the following criteria:*
 - (a) the name of the contract water bank;*
 - (b) the mailing address for the contract water bank;*
 - (c) the proposed service area map for the contract water bank;*
 - (d) a description of how the contract water bank's governing body will be structured and operate;*
 - (e) a description for how water delivery requests and loaned water rights are to be administered;*
 - (f) criteria for the participation, if any, of non-public entities;*

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(g) includes a copy of the contract, provided that a public entity may redact any information that is private, controlled, protected, or otherwise restricted under Title 19, Chapter 239, Public Records;

(h) information regarding how the public can learn when the submittal of an application or contract that is the basis of the contract water bank is on the agenda of a public meeting of the public entity under Title 19, Chapter 241, Meetings of State and Local Agencies;

(i) whether the contract water bank will accept deposits of surface water rights or groundwater rights, provided that a contract water bank may not accept deposits of both surface water rights and groundwater rights; and

(j) the process the contract water bank will follow if the contract water bank terminates, dissolves, or the State Engineer revokes the contract water bank's approval to operate pursuant to this chapter, including how the contract water bank will return banked water rights to depositors and how the contract water bank will return any amounts owing to depositors.

(2) The State Engineer may prepare a form or online water bank application for a water bank applicant to use in submitting a water bank application to the State Engineer under this part.

Sec. 14 Action by State Engineer on contract water bank application.

(1) Upon receipt of a water bank application for a proposed contract water bank, the State Engineer shall record the day on which the water bank application is received.

(2) The State Engineer shall:

(a) examine the water bank application to determine whether changes are required for the State Engineer to process the application in accordance with this part;

(b) review the water bank application to determine whether it meets the objectives of a water bank described in Sec. 4 of this act;

(c) consider the water bank application complete if the application satisfies this part; and

(d) notify the water bank applicant of any additional information or changes needed to process the water bank application.

(3) A contract water bank may review public comments and comments from the State Engineer before a final decision is made by the State Engineer. If the contract water bank desires to make changes to the contract water bank's application, the contract water bank shall notify the State Engineer in writing before the State Engineer takes action on the application that the contract water bank will submit a revised application following the same process that governs the filing of an original application.

(4) Within 30 days of the date the State Engineer determines that an application is complete, the State Engineer shall post notice of the application in accordance with Sec. 3 of this act.

(5) The notice required by Subsection (4), shall state:

(a) that a water bank application to approve a contract water bank has been filed with the State Engineer; and

(b) where a person may review the water bank application.

Sec. 15 Review of contract water bank application.

(1) After complying with Sec. 14 of this act, the State Engineer shall approve a water bank application for a contract water bank if the water bank application satisfies Sec. 13 of this act, which is to be liberally interpreted by the State Engineer to facilitate the objectives described in

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Sec. 4 of this act.

(2) In approving a water rights application, the State Engineer shall:

(a) issue an order approving the contract water bank; and

(b) publish a summary of the information submitted by the public entity under Sec. 13(1) of this act on the water banking website.

(3) If the State Engineer denies a water bank application, the State Engineer shall issue a written explanation to the water bank applicant that sets forth the reason for the denial..

Sec. 16 Amending application.

(1) After the State Engineer approves a contract water bank's application under this part, the contract water bank may seek to amend the contract water bank's application by filing a description of the proposed amendment with the State Engineer. The State Engineer shall follow the procedures of Sec. 12 to Sec. 15 of this act to approve an amendment to a contract water bank's application.

(2) An amendment approved by the State Engineer becomes effective on the first day of the next reporting year.

Part 4. Reporting by Water Banks

Sec. 17 Annual reports. *On or before January 31 of each year, the governing body of a water bank shall submit to the State Engineer an annual report on the governing body's management of the water bank's operations for the previous reporting year on a form provided by the State Engineer that shall include the following information for the prior reporting year:*

(1) a tabulation of the volume and change application number of water rights deposited in the water bank;

(2) the nature of use of each banked water right before the banked water right was deposited in the water bank and the volumes of water allocated to each use before being deposited;

(3) a tabulation of loaned water rights from that water bank, which includes:

(a) the change application number;

(b) the volume of water derived from the loaned water rights;

(c) the nature of use of the loaned water rights and the volumes of water allocated to each use; and

(d) for a statutory water bank, the borrower;

(4) for a statutory water bank:

(a) the amounts charged for the loaned water rights, including a breakdown by nature of use if appropriate;

(b) the revenue generated by the statutory water bank, including the sources of revenue;

(c) the amounts paid out to depositors;

(d) the statutory water bank's expenses;

(e) the balance at the end of the reporting year of the statutory water bank's bank account;

(f) the accounting practices used by the statutory water bank;

(g) whether there is pending or ongoing litigation involving the statutory water bank;

(viii) whether there are, or have been, any governmental audits of the statutory water bank;

(h) any proposed amendments to an approved statutory water bank's procedures for the

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- coming reporting year;
- (i) a narrative explanation of any inconsistencies in the annual report or in the operation of the statutory water bank; and
 - (j) a narrative explanation of how the statutory water bank is or is not fulfilling the objectives described in Sec. 4 of this act; and
- (5) a declaration or affidavit signed by at least two governing members of the statutory water bank stating that the information in the report is correct.

↪If the annual report contains the information required by this section, the State Engineer shall post notice of the annual report in accordance with Sec. 3 of this act. If the annual report does not contain the information required by this section, the State Engineer shall promptly notify the reporting water bank in writing and return the report to the water bank for correction, providing a written explanation to the water bank that sets forth the information that needs to be corrected.

(a) The water bank shall remain in good standing if the water bank submits a corrected annual report that satisfies this section within 90 days of the written notice of the State Engineer.

(b) If a water bank fails to submit an annual report by January 31, or fails to submit a corrected annual report within 90 days of the rejection of an annual report, the water bank is considered in noncompliance under this act.

↪Proof to the satisfaction of the State Engineer that the water bank has mailed, hand-delivered, or sent the annual report electronically is considered compliance with this Subsection.

Sec. 18 Water bank noncompliance -- Revocation of application.

(1) If a water bank is in noncompliance with this chapter pursuant to Sec. 17 of this act, the State Engineer shall give the water bank a written notice of noncompliance that:

(a) explains why the water bank is in noncompliance; and

(b) gives the water bank a 90-day corrective period from the date of the notice to correct the cause of the noncompliance.

(2) The State Engineer shall: post a notice given under Subsection (1) pursuant to Sec. 3 of this act.

(3) If the State Engineer determines that the water bank has corrected the noncompliance within the 90-day corrective period, the State Engineer shall:

(a) provide the water bank written notice that the water bank's noncompliance has been cured; and

(b) post the written notice required under Subsection (3)(a) pursuant to Sec. 3 of this act.

(4) (a) If the water bank fails to correct the noncompliance within the 90-day corrective period, the water bank's approval to operate terminates at the end of the current calendar year.

(b) The State Engineer shall mail notice to the water bank that the water bank's approval to operate has terminated and that the water bank's operations under the application shall cease at the end of the current calendar year.

(c) The State Engineer shall post the notice required under Sec. 3 of this act.

(d) A water bank shall notify the water bank's depositors and borrowers of the dissolution within 60 days of receiving a notice under this Subsection (4) and shall enact the procedures set forth in the water bank's application ceasing the water bank's operations.

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(5) *The state engineer may not approve a water banking application to change an existing water right pursuant to NRS 533.370 that seeks to deposit a water right into a water bank that has been determined to be in noncompliance under this act.*

(6) *A depositor retains title to deposited water rights and the water bank retains no ownership in the deposited water rights.*

Part 5. Deposits

Sec. 19 Banking water.

(1) *A water right may be deposited with a water bank pursuant to an approved change application filed Pursuant to NRS 533.370.*

(2) *The state engineer may not approve a change application that authorizes the use of a water right within a water bank for any period of time that exceeds December 31, 2031.*

(3) *A banked water right is excused from beneficial use requirements of NRS 533.035, 533.045, 533.060, and NRS 534.090..*

(4) *A depositor of a banked water right may use the banked water right in its heretofore use if:*
(a) *the depositor does so under the authority, control, and accounting of the water bank;*
(b) *the water bank informs the state engineer that the depositor's heretofore use is consistent with the water bank's operating procedures for loaned water rights; and*
(c) *during the time the depositor uses the banked water right in its heretofore use, the water bank does not allow the banked water right to be used for other uses within the water bank.*

(5) *If an entity authorized to condemn a water right leases a water right under this chapter, the entity may not begin the process of condemning the water right:*

(a) *while the entity leases the water right under this chapter; or*

(b) *within five years after the day on which the entity's lease of the water right under this act terminates.*

Sec. 20 Delivery request for loaned water rights in water bank.

(1) *A borrower may use water from a water bank for any use within the water bank's service area consistent with the objectives in Sec. 4 of this act and the conditions, if any, of the underlying approved change application.*

(2) *A borrower shall make use of a banked water right by submitting a delivery request to the water bank that complies with the water bank's requirements.*

(3) *The state engineer administratively supervises delivery of water to a borrower. The state engineer may:*

(a) *review an approved delivery request at any point in time to ensure the delivery request complies with a state engineer order approving water rights for use in the water bank, established distribution procedures based on priority, or both; and*

(b) *restrict delivery of loaned water rights if the approved delivery request causes impairment to other water users.*

(4) *A water bank shall keep a daily accounting of loaned water rights.*

(5) *A water bank shall refer known illegal water use actions to the state engineer.*

(6) *A water bank is responsible for the payment of all distribution costs assessed for the delivery of a banked water right.*

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Sec. 21 *State engineer enforcement.* This chapter does not limit or impair the state engineer's enforcement powers set forth in Title 48 of the Nevada Revised States.

Part 6. State Engineer Reports

Sec. 22 *Reports.*

(1) The State Engineer shall report bi-annually by no later than December 31 of the even year to the Legislature regarding the implementation of this act, recommending whether the Legislature should take one or more of the following actions:

- (a) remove or extend the repeal date of the Nevada Water Banking Act Sec. 23 of this act;
- (b) amend the Nevada Water Banking Act; or
- (c) take no action and allow the Nevada Water Baking Act to repeal under Sect. 23 of this act.

(3) At a minimum, the written report described under Subsection (2) shall include the following:

- (a) a summary of the implementation of the Nevada Water Banking Act;
- (b) a statement describing and justifying the recommendation; and
- (c) a description of the positive and negative aspects of the recommendation.

Part 6. Repeal Date of the Nevada Water Banking Act

Sec. 23 *Repeal Date.* The Nevada Water Development Act is repealed effective December 31, 2031.

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