

AMENDED IN SENATE JUNE 19, 2015

AMENDED IN ASSEMBLY MAY 5, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 647**

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**Introduced by Assembly Member Eggman  
(Principal coauthor: Assembly Member Olsen)  
(Coauthor: Senator Berryhill)**

February 24, 2015

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An act to ~~amend~~ *repeal and add* Section 1242 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 647, as amended, Eggman. Beneficial use: storing of water underground.

Under existing law, the right to water or to the use of water is limited to that amount of water that may be reasonably required for the beneficial use to be served. Existing law provides for the reversion of water rights to which a person is entitled when the person fails to beneficially use the water for a period of 5 years. Existing law declares that the storing of water underground, and related diversions for that purpose, constitute a beneficial use of water if the stored water is thereafter applied to the beneficial purposes for which the appropriation for storage was made.

This bill would *repeal that declaration and instead* declare that the ~~storing~~ *diversion* of water to underground *storage* constitutes a beneficial use of water if *the water so stored is thereafter applied to the beneficial purposes for which the appropriation for storage was made, or if the*

~~diverted water is used while it is in underground storage~~ *water is so stored consistent with a sustainable groundwater management plan, statutory authority to conduct groundwater recharge, or a judicial decree and is for specified purposes. This bill would state the intent of the Legislature that this storage of water underground not injure any legal user of the water involved.* *require any person, regardless of an existing water right, seeking to store water underground to first apply to the State Water Resources Control Board for a permit to appropriate water or petition the board for a change. This bill would require the board to include specified conditions in an approved permit or petition.* This bill would provide that the period for the reversion of a water right does not include any period when the water is being used in the aquifer or storage area or is being held in storage for later application to beneficial use, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 1242 of the Water Code is repealed.*
- 2     ~~1242. The storing of water underground, including the diversion~~
- 3     ~~of streams and the flowing of water on lands necessary to the~~
- 4     ~~accomplishment of such storage, constitutes a beneficial use of~~
- 5     ~~water if the water so stored is thereafter applied to the beneficial~~
- 6     ~~purposes for which the appropriation for storage was made.~~
- 7     *SEC. 2. Section 1242 is added to the Water Code, to read:*
- 8     *1242. (a) The diversion of water to underground storage*
- 9     *constitutes a beneficial use of water if either of the following*
- 10    *conditions are met:*
- 11    *(1) The water so stored is thereafter applied to the beneficial*
- 12    *purposes for which the appropriation for storage was made.*
- 13    *(2) The water is so stored consistent with a sustainable*
- 14    *groundwater management plan developed pursuant to Part 2.74*
- 15    *(commencing with Section 10720) of Division 6, statutory authority*
- 16    *to conduct groundwater recharge, or a judicial decree and is for*
- 17    *one of the following purposes:*
- 18    *(A) Protecting water quality from saline water intrusion or*
- 19    *other contamination.*

1 (B) Preventing or remediating significant and unreasonable  
2 land subsidence that substantially interferes with surface land  
3 uses.

4 (C) Preventing or remediating chronic lowering of groundwater  
5 levels indicating a significant and unreasonable depletion of supply  
6 if continued over the planning and implementation horizon of the  
7 sustainable groundwater management plan.

8 (b) (1) Any person, regardless of an existing water right,  
9 seeking to use water for a purpose described in paragraph (2) of  
10 subdivision (a) shall first apply to the board for a permit to  
11 appropriate water or a person holding a water right subject to  
12 this division, or a pre-1914 appropriative water right, shall petition  
13 the board for a change to that water right. The board shall review  
14 the application or petition pursuant to this part.

15 (2) An order by the board approving an application or petition  
16 described in paragraph (1) shall include conditions that prohibit  
17 the diversion of water at times when a legal user of water on the  
18 watercourse from which water is proposed for diversion is  
19 releasing previously stored water or is restricted from diverting  
20 water from that watercourse either due to requirements established  
21 by the board or a regional board to carry out water quality control  
22 plans prepared pursuant to Division 7 (commencing with Section  
23 13000) or imposed pursuant to the Fish and Game Code or the  
24 federal Endangered Species Act of 1973.

25 (3) In addition to the conditions described in paragraph (2), an  
26 order by the board approving an application or petition to  
27 appropriate water from a stream tributary to the Sacramento-San  
28 Joaquin Delta, as defined in Section 12220, shall include  
29 conditions that prohibit the diversion of water at either of the  
30 following times:

31 (A) If the delta is in “balanced water conditions,” as that term  
32 is defined by the Agreement Between the United States of America  
33 and the State of California for the Coordinated Operation of the  
34 Central Valley Project and the State Water Project, dated  
35 November 24, 1986.

36 (B) When the Central Valley Project, the State Water Project,  
37 or other permitted storage project is making releases of previously  
38 stored water for instream purposes or delta outflow.

39 (4) Conditions that prohibit the diversion of water imposed  
40 pursuant to subparagraph (B) of paragraph (3) shall not apply

1 *when upstream releases are made for compliance points upstream*  
2 *of the diversion.*

3 *(c) The forfeiture periods in Sections 1240 and 1241 do not*  
4 *include any period when, consistent with this section, the water is*  
5 *being used in the aquifer or storage area or is being held in storage*  
6 *for later application to beneficial use.*

7 SECTION 1. ~~Section 1242 of the Water Code is amended to~~  
8 ~~read:~~

9 ~~1242. (a) The storing of water underground, including the~~  
10 ~~diversion of streams and the flowing of water on lands necessary~~  
11 ~~to the accomplishment of that storage, constitutes a beneficial use~~  
12 ~~of water if the water so stored meets one or both of the following~~  
13 ~~conditions:~~

14 ~~(1) Is thereafter applied to the beneficial purposes for which the~~  
15 ~~appropriation for storage was made.~~

16 ~~(2) Is used while it is in underground storage for one or both of~~  
17 ~~the following express purposes:~~

18 ~~(A) Protecting water quality, including providing a hydrostatic~~  
19 ~~barrier to saline water intrusion or other contamination.~~

20 ~~(B) Preventing or remediating significant and unreasonable land~~  
21 ~~subsidence that substantially interferes with surface land uses.~~

22 ~~(b)~~

23 ~~The forfeiture periods in Sections 1240 and 1241 do not include~~  
24 ~~any period when, consistent with this section, the water is being~~  
25 ~~used in the aquifer or storage area or is being held in storage for~~  
26 ~~later application to beneficial use.~~

27 ~~(e) It is the intent of the Legislature that any storage of water~~  
28 ~~underground pursuant to subdivision (a) not injure any legal user~~  
29 ~~of the water involved.~~