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Guidance Letter 16-001, replacing 11-001 and 15-001

Date: April 7, 2016

To: All County Assessors and All County Treasurers

From: Terry E. Rubald, Deputy Executive Director, Department of Taxation

A handwritten signature in blue ink that reads "Terry E. Rubald".

CC: Deonne Contine, Executive Director, Department of Taxation
Kelly Langley, Supervisor, Local Government Finance
Jason King, Nevada State Engineer

Subject: **Treatment of certain underground water basin assessments; billing for special assessment using an allocation factor.**

SUMMARY: The Department has received additional advice from county assessors and treasurers and the Nevada State Water Division. As a result, this Guidance Letter supersedes and replaces Guidance Letters 11-001 and 15-001. This letter provides guidance with regard to special assessments for groundwater basins. Prior to passage of AB 46 (effective May 24, 2011), the levy for groundwater basins was included for some entities in the combined property tax rate and was thus subject to abatements pursuant to NRS 361.4722 and 361.4723. Due to the change enacted by AB 46, codified at NRS 361.47111, "ad valorem taxes" does not include any special assessments levied for surface water sources or groundwater basins. The surface water source or groundwater basin assessment is considered to be a special assessment, separately calculated, that is not subject to any calculation of abatement of property taxes.

This Guidance Letter further discusses the treatment of the special assessments required by NRS 533.280, 533.285, and 534.040.

APPLICABLE STATUTES:

NRS 361.47111, 361.4722 through 361.4735; 533.280, 533.285 and NRS 534.040

DISCUSSION:

The Division of Water Resources ("Division"), headed by the State Engineer, is responsible for several programs designed to conserve, protect, manage and enhance the State's water resources, including administering adjudicated stream systems and designated groundwater basins. In order to provide these services, the State Engineer is authorized to prepare a budget

showing the expenses associated with the cost of administering a particular stream system, water district or groundwater basin, and to charge those water users through each county's billing and collection system utilized for the collection of property taxes.

Cost of Administration of Surface Water Rights

The State Engineer's statutory authority for administering and regulating surface water statewide is found in NRS 533.280. For some stream systems, the Division prepares an annual budget between the first Monday in October and the first Monday in December each year to cover the cost of administering that system. The annual budget must show the aggregate amount necessary to pay the expenses of the stream system or water district, the aggregate water rights within the stream system, and the unit charge necessary to provide the money required. The budget, including the unit charge, is then submitted to each Board of County Commissioners of those counties in which a stream system or water district is administered by the Division. The County Commission in turn certifies the amount to be entered on the assessment roll by the County Assessor.

Upon receipt of the certification made by the County Commission, the County Assessor places the special assessment on the secured assessment roll for each water user/owner of record and the property or acreage served. Typically the Division provides a summary, a specific list of water users/owners of record, and the amount of the special assessment to be made against an APN ("Assessor's Parcel Number"). The secured assessment roll is turned over to the County Treasurer for billing and collection no later than July 10th annually and becomes the "tax roll." See NRS 361.465(2). The County Treasurer lists the special assessment for the cost of administration of a surface water rights area as a charge on the tax bill separate from the property tax and any other special assessments on the tax bill.

Cost of Administration of Groundwater Rights

With regard to groundwater right budgets, NRS 534.040 applies. The Division hires well supervisors and assistants to administer groundwater rights, and the cost of the salaries along with other necessary expenses of administration, are also submitted to the County Commission. In this case, the County Commission levies a special assessment equal to the costs submitted by the Division rather than "certifying" charges as is done for surface water rights special assessments.

There are two kinds of special assessments for groundwater users. The first type applies to basins where the water is predominantly used for agricultural purposes (50% or more), and the second type applies to those basins where the water is not predominantly used for agricultural purposes, i.e. municipal uses.

If the groundwater basin being administered is predominantly used for agricultural purposes, the Division provides the County Commission with a list of water users having a permit to appropriate water, along with the total amount to be levied on that water user. The County Commission levies a special assessment on each water user on the list and orders the County Treasurer to place the special assessment so levied by the County Commission only on those accounts. There is no time limit on when the levy function must take place. NRS 534.040(2) states that the levy may be made annually "or at such time as the assessment is needed." This implies that a levy could be made later than the usual timeframe of June 25 to July 1 for adoption of all other tax rates. The County Treasurer would have to bill a levy made later in the

year separately. Practically speaking, however, it is more efficient and cost effective to include the special assessment with the property tax bill sent in July.

If the groundwater basin or area being administered is not predominantly agricultural, then the levy is calculated and applied in a different manner. First, the amount levied by the County Commission is applied to all “taxable property” in the designated groundwater area. Prior to passage of NRS 361.47111 (AB 46, 2011), the levy for groundwater users in municipal areas was considered to be part of the combined rate for property tax purposes. Thus the reference to “taxable property” means the levy of the special assessment is applied to water users/owners of record that have property that is taxable for property tax purposes. If the property is exempt for property tax purposes, then the levy of the special assessment for water users does not apply. (This statement reflects re-consideration of the advice previously provided in Guidance Letter 11-001).

For a groundwater area that is not predominantly agricultural, the law is silent as to the proportion to be used to allocate the levy of the total special assessment. There is no reference to a ratio of individual water right to aggregate water rights as there is for an area which is predominantly agricultural. Because there is a reference to “taxable property,” the ratio historically used has been calculated by comparing the assessed value of each taxable property within the groundwater area compared to the total assessed value of all taxable properties in the area. This is a significantly different proportion than the proportion defined by water use but is used in lieu of having specific water use information by each municipal water user. A third method is to simply allocate the charge equally to each property, known as a “flat rate.”

APPLICATION:

1. For surface water administration costs (NRS 533.280), the Division of Water Resources (“Division”) provides the budgeted expenses and total charge for each county to the Board of County Commissioners of each county no sooner than the first Monday in October and no later than the first Monday in December. The Division provides a list of surface water users, and to the extent possible, APN numbers, as well as the amount to be specially assessed to each user.
2. The amount charged to each surface water user is generally based on the proportion of acre feet used by the surface water user compared to the total acre feet in the stream system. In some cases the proportion is measured in cubic feet per second. The Division must determine who the surface water users are upon which a special assessment must be made. Surface water assessments must be assessed to the surface water right users only. There is no mention of “taxable property” as the measure of who should be on the list as there is for certain groundwater basin areas. It is simply “the charge against each water user” is assessed against any party who holds water rights on a decreed surface water source, regardless of taxable status.¹ Pursuant to NRS 533.280(2)(d), the minimum special assessment is \$1.00. If the minimum special assessment results in revenue greater than the charge submitted by the Division to the Board of County Commissioners, the revenue so collected should be distributed to the Division.

¹ This Guidance Letter defers to the Division to make the determination about the measure of who is subject to special assessment in groundwater areas predominantly agricultural in nature.

3. The Board of County Commissioners must certify the Division's summary and list. The certification function is subject to Open Meeting Law requirements. The certified summary and list is then turned over to the County Assessor.
4. For surface water administration costs, NRS 533.285 requires the County Assessor to "enter the amount of the charge on the Assessment Roll." The roll to be used is actually the secured tax roll transmitted to the County Treasurer no later than July 10th annually. The County Assessor enters the dollar amount to be charged each surface water user on the APN number related to the property or properties with which the water right is associated. Since the special assessment must not be confused with the property tax, the amount of the charge must not be converted into assessed value, but simply appears as a dollar amount. Some counties, after the Assessor identifies the property subject to the special assessment, arrange for the entry of the amount of the assessment on the tax roll to be completed by the County Treasurer.
5. Once the County Treasurer receives the secured tax roll, a tax bill is created. The special assessment appears on the tax bill separately from the property tax and any other special assessments. Because the special assessment also creates a lien on the property pursuant to NRS 533.285(2), failure to pay the special assessment on the tax bill must go through the same process as other delinquent taxes.
6. The process is different for groundwater basin special assessments. First, a determination must be made by the Division about whether the area to be administered is predominantly agricultural in nature. If the area designated in a groundwater basin is predominantly agricultural in nature, the Division must then provide to the County Commission a summary of total special assessments and a list of groundwater users with the amount to be levied against each user.
7. For those water basins where the agricultural use of water is predominant, the assessment is charged against each permitted water right holder, and is based on the proportion which the individual water right bears to the aggregate water rights. Per NRS 534.040(2), the minimum charge is \$1.00. If the minimum special assessment results in revenue greater than the charge submitted by the Division, the revenue so collected should be distributed to the Division.
8. The County Commission then levies the total special assessment for a primarily agricultural area by resolution. The resolution also identifies each water user who has a permit to appropriate water and the amount of special assessment to each, based on the information provided by the Division.
9. The levied special assessment is transmitted to the County Treasurer who places the amount on the secured tax roll as described in Step 4.
10. For groundwater basins in which agricultural use is not the predominant use, the Division provides the total special assessment attributable to the water basin. The County Commission then levies the amount of the total special assessment upon all "taxable property" within the boundaries of the basin. County officials including the county assessor and the county treasurer should cooperate with the Division in providing information about properties subject to property taxes as necessary.

11. A property subject to the special groundwater basin assessment is determined by whether the real property is also subject to property tax, hence the term “taxable property” as used in NRS 534.040(2). If the real property is not subject to property tax because it is 100% exempt pursuant to NRS 361.050 through NRS 361.186, then the special groundwater basin assessment does not apply. If the property has received only a partial exemption from property tax, then the portion which remains taxable for property tax is also subject to the special groundwater basin assessment.
12. Historically, several of the larger communities where municipal use constitutes 50% or more of the total use have allocated the special assessment by applying a rate to the assessed value of each property within the groundwater basin. The rate was calculated by dividing the total special assessment by the total assessed value for the groundwater basin. It was treated like a tax rate and included in the combined tax rate. The result was that each property was charged a portion of the total special assessment based on the proportion of the property’s assessed value to the total assessed value of the district. The method can cause revenues to be over or under the required total amount. Therefore, the preferred method is to apply a flat rate to all users where the total special assessment is divided by the number of properties within the water basin. Because there are no regulations dictating the method of allocation to non-agricultural users, the Division of Water Resources will work with county officials including the county assessor and the county treasurer to determine the most appropriate and efficient method to allocate charges to all non-agricultural water users.
13. Some counties have paid the Division’s charges without levying a special assessment upon water users. Treating the charge as a General Fund expense in effect causes every taxpayer in the county to contribute to the special assessment of the basin, in effect subsidizing the special assessment payers. This treatment is not authorized because NRS 534.040(2) directs the County Commission to levy a special assessment. There is no authority to pay the charges from the general fund without a special assessment.
14. Since the special assessment rate is not part of the combined property tax rate, the special assessment rate has no effect on property tax rate limitations.
15. If a special assessment is deemed uncollectible by the county treasurer, the Board of County Commissioners has the authority to remove the assessment from the Tax Roll upon first notifying the Division of Water Resources that such action will be taken.

WEBSITE LOCATIONS:

Nevada Revised Statutes (NRS): <http://www.leg.state.nv.us/NRS/>
Nevada Administrative Code: <http://www.leg.state.nv.us/NAC/CHAPTERS.html>

Department of Taxation Guidance letters: <http://www.tax.state.nv.us>; then select “Publications;” then select Assessment Standards Publications and “Guidance letters.”