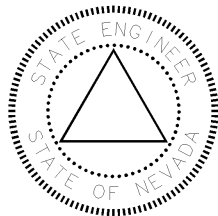


STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES



**SUMMARY OF STATUTORY PROCEDURES
FOR FILING
CLAIMS OF VESTED RIGHTS,
MAKING APPLICATION FOR A WATER RIGHT
AND
A SUMMARY OF FEES OF THE STATE ENGINEER**

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INTRODUCTION

The water of all sources in Nevada belongs to the public. Water may be appropriated as provided by Nevada Water Law, and not otherwise.

A water right cannot be acquired by adverse possession.

This pamphlet summarizes Nevada requirements concerning claims of vested rights and water right applications and permits, and is not intended to be a comprehensive explanation of requirements established by Nevada Water Law or by the State Engineer pursuant to Nevada Water Law. A knowledgeable person should be consulted concerning water right requirements. Water right requirements may vary from place to place and from time to time throughout Nevada depending upon site conditions, water availability and water demand. Division of Water Resources staff is available to assist and answer questions about Nevada Water Law. The complete text of the water law is available on the Division's website: <http://water.nv.gov>.

CLAIMS OF VESTED RIGHTS

WHAT IS A VESTED RIGHT?

Beneficial use is the basis, the measure, and the limit of the right to use water. Some common beneficial uses are irrigation, stockwatering, mining and milling, and domestic. Vested rights to surface waters are those rights for which the work to establish beneficial use was initiated prior to March 1, 1905, the date of adoption of Nevada's Water Law. Vested rights from an underground source are those rights initiated prior to March 22, 1913, for artesian water and prior to March 25, 1939, for percolating water. The process that determines the extent of all vested rights on a water source is called an adjudication. An adjudication is initiated by order of the State Engineer. All claimants to vested rights on a particular source must file proofs of appropriation and supporting maps in accordance with the State Engineer's order. In the absence of an order, claimants to vested rights may wish to file their proofs and supporting maps in order to inform the State Engineer and any applicant for a permitted right on the same source that the claimed vested right exists. In this case, the supporting map need not be filed until the State Engineer orders the time for taking proofs in an adjudication process.

FILING A CLAIM OF VESTED RIGHT

Any claimant to a vested right may file his claim in the Office of the State Engineer by completing and filing a Proof of Appropriation form. The proof must be accompanied by the statutory filing fee of \$50.00 for stockwatering and \$100.00 for all other uses. A supporting map prepared by a State



Water Right Surveyor must be submitted by the time ordered by the State Engineer in the adjudication process.

THE ADJUDICATION PROCESS

Chapter 533 of the Nevada Revised Statutes governs adjudication proceedings. A brief summary of steps involved in an adjudication proceeding follows:

1. One or more water users on a stream system may petition the State Engineer to begin adjudication proceedings. In the absence of a petition, the State Engineer may initiate the proceedings.
2. The State Engineer investigates facts and conditions concerning the stream system and determines if he will enter an Order granting the petition.
3. If the petition is granted, the State Engineer notifies all claimants and has a Notice of Order and Proceedings published for four consecutive weeks in one or more newspapers of general circulation within the boundaries of the stream system.
4. The next step in the process is filing the proofs and title reports by the claimants according to the schedule published in the Notice of Order for taking proofs.
5. From the evidence submitted during the period for taking Proofs, a Preliminary Order of Determination is prepared by the State Engineer. The Preliminary Order allocates the waters of the stream system to claimants having valid vested rights.
6. All evidence submitted during the period for taking Proofs and used in preparing the Preliminary Order is available for inspection in the Office of the State Engineer by any claimant for a period of 20 days or more.
7. The Preliminary Order of Determination is subject to objections by any of the claimants, and if objections are filed a hearing is held before the State Engineer.
8. Next, an Order of Determination is prepared by the State Engineer and is submitted to all claimants and to the District Court



having jurisdiction. All evidence and maps are also forwarded to the District Court.

9. Any claimant may file an exception to the Order of Determination and be heard before the District Judge at a hearing.
10. The District Judge then enters Findings of Fact, Conclusions of Law and the Decree, which determines the water rights on the stream system.

Each claimant must pay his proportionate share of the costs involved in the proceedings such as publication costs, map reproduction costs, court reporter costs, etc. These costs do not include the fee to be paid to a State Water Right Surveyor for the survey and map preparation or the filing fee which is required at the time the proof is filed.

APPLICATIONS

APPLICATION TO APPROPRIATE

To acquire a new water right, an application on a form supplied by the Division of Water Resources (DWR) must be filed with the State Engineer. The application must be supported by a map prepared in prescribed form by a State Water Right Surveyor (a Registered Land Surveyor or Registered Professional Engineer duly licensed as a State Water Right Surveyor by the State Engineer). The supporting map must show the point of diversion and place of use within the proper legal subdivisions. These map locations must coincide with the physical locations, so that all interested parties will have accurate information describing the proposed appropriation of water.

Since the State Water Right Surveyor has had the opportunity to become familiar with issues related to the acquisition of a water right, he can usually answer many questions which arise. A complete list of licensed State Water Right Surveyors is available upon request from the DWR.

Once the properly completed application, map and statutory filing fee have been received by the DWR office in Carson City, the application is indexed and processed. As required by law, the division sends a summary copy of the application to a newspaper of general circulation in the county where the proposed point of diversion is located. This notice is published in the newspaper once a week for four consecutive weeks. For 30 days following the last date of publication, any interested person may file a protest with the State Engineer. The protest should set forth with reasonable certainty and detail the grounds on which the protest is being submitted and whether the protestant seeks denial of the application or conditional approval (NRS 533.365).



After 30 days from the last date of publication, the application becomes ready for action. The State Engineer then makes a determination whether to grant or deny the application. The State Engineer may conduct field investigations and/or a public hearing to develop a complete record.

APPLICATION TO CHANGE

The point of diversion, place and manner of use of an existing right or portion thereof (permitted, certified, vested) may be changed subject to statutory criteria. The statutory criteria for approval includes that the proposed change may not impair existing rights or protectable interest in existing domestic wells or be detrimental to the public interest.

No application to change the point of diversion from one source to a totally different source can be granted, as an example ground-water to surface water.

The form for the application to change is provided by the DWR and is similar to the application to appropriate.

When a permit is issued under an application to change, it is granted subject to all terms and conditions under which the original right was granted. The statutes also require that proofs of completion of work and beneficial use be filed under the permit to change.

All applications to change must be supported by a map, prepared by a licensed State Water Right Surveyor, showing the old point of diversion and/or place of use, and the new point of diversion and/or place of use. If the application to change is for irrigation purposes, a cultural map, prepared by a licensed State Water Right Surveyor, may be required to support the proof of beneficial use.

The application to change bears the same date of priority as the right proposed to be changed.

TEMPORARY CHANGES

The State Engineer may approve an application for a temporary change of point of diversion, manner of use, or place of use of water already appropriated without publication of a notice of the application, provided that the prescribed fees are paid and that the temporary change is in the public interest and does not impair water rights held by other persons or protectable interest in existing domestic wells. A “temporary change” permit may be granted for any period not to exceed one year. The applicant must clearly explain the need for the temporary change.



ENVIRONMENTAL PERMIT

“Environmental Permit” means a temporary permit to appropriate water to avoid or mitigate pollution or contamination of a water source.

The State Engineer may approve an application for an environmental permit without publication of a notice of the application if:

1. The application is accompanied by the prescribed fees and a copy of a letter or order issued by the Division of Environmental Protection of the State Department of Conservation and Natural Resources requiring the applicant to take steps to protect the environment.
2. The appropriation is in the public interest; and
3. The appropriation does not impair water rights held by other persons.

The State Engineer shall not issue an environmental permit for a period which is longer than the period set forth in the letter or order issued by the Division of Environmental Protection of the State Department of Conservation and Natural Resources requiring the applicant to take steps to protect the environment. Also the State Engineer shall not change the use for which the environmental permit is issued.

The form for the application is provided by the DWR and is similar to the application to appropriate.

THE PERMIT

Where there is unappropriated water in the source, and where the proposed use or change does not tend to impair existing rights or conflict with protectable interest in existing domestic wells, or to be otherwise detrimental to the public interest, the State Engineer is required by statute to approve the application.

The general policy of the State Engineer is to limit ground-water withdrawals from a basin to the average annual recharge to the ground-water basin or its “perennial yield.” Perennial yield of a ground-water basin may be defined as the maximum amount of natural discharge that can be salvaged each year over the long term by pumping without bringing about some undesired result. An example of an undesirable result would be a significant decline in the static water level.

A permit to appropriate water grants the right to develop a certain amount of water from a particular source for a certain purpose and to be used at a definite location. In other words, the consent of the state is given in a manner provided by law to acquire use of water and gives the holder of the



permit a right to protect the water right. This can become a perfected appropriation only upon: (1) completion of the works of diversion; (2) the placing of the water to beneficial use; and (3) filing the proofs required. Such a right may be lost to the holder of the permit if he fails to meet the statutory requirements.

Each permit is issued for a specific use of a specific amount of water—a determination made on the basis of data and information available to the State Engineer. The water must be put to use as authorized, and proof of that use must be made to the State Engineer within the time limits specified on the permit. In the case of extenuating circumstances, such as litigation or large projects requiring long periods of time for planning, financing, and construction, extensions of time may be granted by the State Engineer. The exact amount of time depends on factors such as the manner of use and the amount of water to be used.

When the State Engineer issues a permit he establishes terms and conditions. These terms and conditions consist of general provisions stating that the permit is subject to all prior rights on the source, measuring device requirements and any special limitations or conditions that the State Engineer may impose. Diversion rates and annual duty of water that may be used are also set forth in the permits terms.

The permit terms also reflect the times required for filing proof of completion of work and proof of beneficial use. Perhaps most important of all is the signature of the State Engineer. He or his authorized assistants are the only persons in the state authorized to issue permits to appropriate the waters of the State of Nevada with the exception of Colorado River appropriations.

GENERAL PERMIT TERMS

PRIOR RIGHTS

Since the basis of the water law in Nevada is the prior appropriation doctrine, all rights are issued subject to prior rights on the source. The date of priority is the date the original application was received by the State Engineer at the Division of Water Resources office in Carson City. All permits bearing an earlier date are “senior” and all permits bearing a later date are “junior.”

MEASURING DEVICES

The statutes require that suitable measuring devices be installed at or near the point of diversion. Permits for ground-water almost always require that a totalizing meter be installed and maintained in the discharge pipeline near the point of diversion and accurate measurements kept of the water placed to beneficial use.



FLOWING WELLS

Proposed points of diversion from underground sources in artesian basins must have valves to control flowing wells when they are not in use to prevent waste.

WELLS DRILLED NEAR RIVERS

In cases where a well is drilled in a river plain the permit terms usually contain the provision that perforations shall not start less than 100 feet from the surface.

AMOUNT OF DIVERSION AND YEARLY USE

The amount of allowable diversion in cubic feet per second (cfs) is also set out in the permit terms. This amount depends on what the applicant requests and what the State Engineer finds is reasonably necessary for the use sought in the application. Generally, the applicant is allowed the diversion needed to provide a sufficient head of water for distribution, but is limited to a seasonal or annual duty of water. The amount of water the permit holder will be allowed to divert annually (i.e., the duty) is a limitation noted. The State Engineer determines this duty from data and information showing the actual amounts needed in the same geographical area for existing permitted uses of the same type. Or, if the permit is for water to be used on land subject to a court decree, the duty allowed by the court may be used.

When the water appropriated from a source is going to be used to supplement water already supplied from other sources, the duty allowed will be limited to the amount necessary to reasonably fulfill the purpose of the use from all sources. For example, an owner has a parcel of land having a yearly duty of four acre-feet per acre from each of two or more sources for that parcel, will still be limited to a combined total duty of four-acre feet per acre from any and all sources.

Note too, that every point of diversion for consumptive use, except wells used for “domestic” purposes, as defined in NRS 534.013, must have a permit, even though it may be used to serve in the same land or purpose as another right.



PROOFS

In several Nevada Supreme Court cases prior to the enactment of the Water Law, it was established that the date of priority of an appropriation “related back” to the beginning of the works of diversion for the appropriation. This rule became known as the Doctrine of Relation. It was also established that in order for an appropriator to maintain this early priority, he had to proceed with the appropriation and place the water to beneficial use within a reasonable time period, consistent with the magnitude of the project, good faith and diligent effort.

These principles were perpetuated by the legislature with the enactment of the Water Law. The date of priority of subsequent appropriations is set as the date of filing the application with the State Engineer. In order to show that he is proceeding to perfect his water right in a reasonable manner (with “reasonable diligence”), the permittee must file a Proof of Completion of Work and a Proof of Beneficial Use with the State Engineer, all within time limits specified on the permit.

PROOF OF COMPLETION OF WORK

Proof of completion of work must be submitted within the time frame established at the time the permit is issued. Before this proof can be filed the actual works of diversion must be completed: ditches on a surface source; well, pump and motor on an underground source; a measuring device or totalizing meter is usually required. This proof may be filed any time after the permit is issued-provided the work is actually complete, but it must be submitted to the State Engineer’s office within 30 days after the due date shown on the permit and/or certified notice.

PROOF OF BENEFICIAL USE

The proof of beneficial use is the final proof required by the terms of the permit. The filing date depends on the amount of work that the permit holder contemplated when the application was filed and what the State Engineer determined to be a reasonable time to accomplish beneficial use.

For example, on irrigation permits the due date depends on the amount of land the permit holder made application to irrigate. The more land to be irrigated, the longer the time considered for filing the proof. The same criteria holds for permits for other purposes, i.e., more extensive work may be allowed more time for filing proof of beneficial use since the water must actually have been used in the manner for which the permit was granted. Good faith and reasonable diligence are the statutory criteria guiding the State Engineer (NRS 533.395) in considering extensions of time.



The physical conditions must exist as stated. When a permit holder or his authorized agent files proof of beneficial use, he must state under oath that the amount of water used, and the manner and place of use, are as described on the affidavit.

When the permit is for irrigation purposes, a cultural map prepared by a licensed State Water Right Surveyor, must accompany the beneficial use affidavit. The cultural map shows the kinds of crops and their acreages. A State Water Right Surveyor must also measure the amount of water being diverted, and the name of the surveyor, the date and amount of flow must be entered in the proper place on the Proof of Beneficial Use form. Proof of beneficial use maps may be required for uses other than irrigation.

The map and measurement are basically for the permit holder's protection in case the validity of the appropriation and the placing of water to beneficial use is challenged.

A permit holder may place less water on less land than granted on the permit. But when this occurs, the water right is then limited to that which was actually put to beneficial use. If the permittee has filed this Proof of Beneficial Use and then wants to expand to his originally permitted acreage, or use the water for it at a later date, he must obtain another permit.

EXTENSION OF TIME

The State Engineer may grant extensions of time for filing a proof, usually for not more than one year, if the request is based on proper circumstances. Requests must be filed before the time for filing the proof expires, and are not considered if filed more than 30 days before the due date of the proof.

Generally the criteria for granting extensions includes (1) court action or other problems incidental to the project making continuance of work under the permit impracticable; (2) the permit holder has been proceeding with reasonable diligence but is unable to complete the necessary work in time to file the proof; (3) unanticipated natural conditions, etc.

The State Engineer shall not grant an extension of time unless he determines from the proof and evidence so submitted that the applicant is proceeding in good faith and with reasonable diligence to perfect the application.

CERTIFICATE OF APPROPRIATION

Once the proofs have all been filed and the other terms of the permit complied with, the State Engineer prepares a Certificate of Appropriation describing the use to be made of the water as shown on the Proof of Beneficial Use. The State Engineer records the certificate in the office of the Division of Water Resources, with a copy going to the permit holder.



A certificated underground water right may be lost by forfeiture and/or abandonment (NRS 534.090). A certificated surface water right may be lost only by abandonment (NRS 533.060).

The State Engineer may grant an extension of time to prevent a forfeiture, provided a proper request to do so is submitted prior to the fifth successive year of nonuse.

PROTESTS

Any person interested may protest the granting of an application within 30 days after the last date of publication. When an application is protested, and the reasons for protest appear to have merit, the DWR may conduct a formal field investigation. All interested parties are notified to meet with a representative of the DWR, and are given an opportunity to state their positions.

If the State Engineer feels he cannot reach a proper decision on the matter based on the information acquired at the field investigation, he may hold a public administrative hearing for the purpose of developing an additional record of testimony and evidence. It is optional with the applicant or protestant whether or not he shall be represented by legal counsel. Hearings will be conducted in such manner as the State Engineer deems most suitable to the particular case and the technical rules of evidence do not apply.

The costs of the transcripts of the testimony are borne by the applicant and the protestant on a prorata basis.

APPEALS

Should anyone feel he has been aggrieved by any order or decision of the State Engineer, he may appeal it in the District Court in the manner set forth in NRS 533.450.

On decreed stream systems, the court having jurisdiction at the time the decree was entered has continuing jurisdiction over matters relating to that decree.

The appeal must also be filed within 30 days following the State Engineer's order or decision. Notice of the appeal must be served personally or by certified mail on the State Engineer at his office in the State Capital, and a similar notice must be served personally or by certified mail on those parties affected by the appeal.

The State Engineer's decision is prima facie correct, and the burden of proof is on the party attacking the decision.

If a stay of decision or order is requested, the appellant must post bond within five days after the court sets the amount of the bond.

Appeal from judgment of the District Court on the matter may be taken to the State Supreme Court.



ARTIFICIAL GROUND-WATER RECHARGE AND RECOVERY PROJECTS

Certain provisions of NRS Chapter 534 (534.250 thru 534.340) allow ground-water basins to be utilized for artificial ground-water recharge and recovery projects. Generally, persons desiring to operate a project must first make application to, and obtain a permit from, the Division of Water Resources. NRS 534.270 specifically sets forth the time elements, review and protest process and other guideline criteria that the State Engineer follows in processing and considering such projects. Persons desiring to pursue a project or having interest or additional inquiries should contact the Division of Water Resources for assistance.

ASSIGNABILITY OF WATER RIGHTS

Once a permit is granted, the water must be used on the land and for the purpose described in the permit.

A water right is a form of property right and is protected as such. It can be severed from the land only with the consent of the owner of record as reflected in the record in the DWR office.

Water rights are appurtenant to the land and are conveyed by deed with the land unless the seller specifically reserves all or portions of the water right in the deed. Every water right conveyance document must be filed in the Office of the County Recorder in each county where the water is applied to beneficial use or diverted from the source. Upon transfer of a water right a Report of Conveyance must be filed with the State Engineer. The State Engineer shall confirm the Report of Conveyance upon the proper filing of the report, the payment of the prescribed fees, provided no conflict exists in the chain of title and the State Engineer is able to determine the rate of diversion and the amount of acre-feet from the conveyance documents. The water right permit number should be listed in each document.

“Guidelines for Transferring Ownership of Water Rights” and for filing the Report of Conveyance of title are available on the Division’s website.

DAMS

Any person wishing to construct, reconstruct or alter any dam must notify the Division of Water Resources prior to starting construction. If required by the State Engineer, and for any dam which impounds more than 20 acre-feet or which is 20 feet or more in height as measured from the downstream toe to the crest of the dam, a dam application must be filed on a form provided by the DWR at least 30 days before construction is to begin. This application must be accompanied and supported by three sets of the plans and



specifications prepared and signed by a Nevada Registered Professional Engineer.

In addition, if the applicant has no valid water right which will be used in conjunction with the waters stored in the reservoir, he must file an application for permission to store the amount of water he will impound. This form is available on the Division's website.

When the State Engineer is satisfied that the proposed construction meets proper standards, he notifies the applicant of his approval. The statutes prohibit construction and use of any dam before that official approval – except dams built by the Bureau of Reclamation or the United States Army Corps of Engineers. However, these agencies are still required to file duplicate plans and specifications with the State Engineer.

There are extensive publications and documents dealing with the preparation of applications and plans and specifications for a dam on the Division's website.

WELL DRILLERS AND WELLS

NRS 534.140 provides that every well driller, before engaging in the physical drilling of a well for development of water, shall annually make application to the State Engineer and be granted a license to drill water wells. A fee of \$100 shall accompany each application for a well driller's license and a fee of \$50 shall be paid each year for renewal thereof. In addition every well driller who is the owner of a well drilling rig, or who has a well drilling rig, shall obtain a license as a well driller from the State Contractor's Board. *All water wells, including domestic wells must be drilled by a licensed driller.*

All drillers are required to submit "intent to drill" cards three working days before starting the well, and a well log within 30 days of its completion. These forms are furnished by the DWR.

Regulations for drilling water wells in the State of Nevada are available from the Division of Water Resources upon request. Well drillers and owners of wells should review the regulations before engaging in well drilling operations especially in designated ground-water basins.



STATUTORY FEES (NRS 533.435)

The following fees shall be collected by the State Engineer* :

-For examining and filing an application for a permit to appropriate water	\$300.00
this fee includes the cost of publication, which is \$50.	
-For examining and filing an application for a permit to change the point of diversion, manner of use or place of use of an existing right.....	\$200.00
this fee includes the cost of publication, which is \$50.	
-For reviewing a corrected application or map, or both, in connection with an application for a permit	\$100.00
-For issuing and recording each permit to appropriate water for any purpose (except for generating hydroelectric power which results in nonconsumptive use of the water, or watering livestock or wildlife purposes)	\$300.00
plus \$3 per acre-foot approved or fraction thereof.	
-For issuing and recording each permit to change an existing right whether temporary or permanent for any purpose (except for generating hydroelectric power which results in nonconsumptive use of the water, for watering livestock or wildlife purposes which change the point of diversion or place of use only).....	\$250.00
plus \$3 per acre-foot approved or fraction thereof.	
-For issuing and recording each permit to appropriate or change the point of diversion or place of use of an existing right only whether temporary or permanent for watering livestock or wildlife purposes.....	\$200.00
plus \$50 for each second-foot of water approved or fraction thereof.	
-For issuing and recording each permit to appropriate or change an existing right whether temporary or permanent for water for generating hydroelectric power which results in nonconsumptive use of the water.....	\$400.00
plus \$50 for each second-foot of water approved or fraction thereof.	
-For issuing a waiver in connection with an application to drill a well	\$100.00
-For filing a secondary application under a reservoir permit	\$250.00
-For approving and recording a secondary permit under a reservoir permit.....	\$450.00

*Revised fees effective July 1, 2009 per Assembly Bill No. 480.



- For reviewing each tentative subdivision map..... \$150.00
plus \$1 per lot.
- For reviewing and approving each final subdivision map..... \$100.00
- For examining and acting upon plans and specifications
for construction of a dam \$1,000.00
- For storage approved under a dam permit
for privately owned nonagricultural dams
which store more than 50 acre-feet\$400.00
plus \$1 per acre-foot storage capacity. Paid annually.
- For filing proof of completion of work\$ 50.00
- For filing proof of beneficial use \$ 50.00
- For filing proof of resumption of a water right \$300.00
- For filing any protest.....\$ 25.00
- For filing any application for extension
of time within which to file proofs (for each year's extension).... \$100.00
- For reviewing a cancellation of a water
right pursuant to a petition for review\$300.00
- For filing and examining a Report of Conveyance \$100.00
plus \$20 per conveyance document.
- For filing any other instrument \$ 10.00
- For making a copy of any document
recorded or filed in his office, for the first page..... \$ 1.00
for each additional page\$ 0.20
- For certifying to copies of documents, records or maps,
for each certificate\$ 5.00
- For each copy of any drawing or map, per square foot\$ 5.00
- For colored mylar plots, per square foot..... \$ 10.00

Environmental Permits (NRS 533.4373)

- For examining and filing the application.....\$150.00
- For issuing and recording the permit\$150.00
plus \$1 per acre-foot approved, or fraction thereof.

Claims of Vested Rights (Proofs of Appropriation) (NRS 533.135)

- For examining and filing any character of claim to
water, except for watering livestock or wildlife purposes.\$100.00
- For examining and filing a proof of appropriation
for watering livestock or wildlife purposes\$ 50.00

Project for Recharge, Storage and Recovery of Water (NRS 534.260)

- For examining and filing an application for a permit to operate
a project for recharge to, storage in, and recovery of water
from an underground source.....\$2,500.00

-When fees are not specified, the State Engineer shall collect the actual cost of the work.



