

APPENDIX R

Nevada Water Law 101

Overview

Nevada's first water law was passed in 1866 and has been amended many times since then. Today, the law serves the people of Nevada by providing the rules for applying for and holding onto a water right, as well as guidelines for the state engineer in managing the state's valuable water resources.

Nevada water law has the flexibility to accommodate new and growing uses of water in Nevada while protecting those who have used the water in the past. All water within the boundaries of the state, whether above or beneath the surface of the ground, belongs to the public and is subject to appropriation for beneficial uses.

Nevada water law is based on two basic principles: prior appropriation and beneficial use. Prior appropriation – also known as “first in time, first in right” – allows for the orderly use of the state's water resources by granting priority to senior water rights in times of shortage. This concept ensures senior water users are protected, even as new uses for water are allocated. A water right permit may only be granted for beneficial uses as provided in Chapters [533](#) and [534](#) of the Nevada Revised Statutes.

Examples of beneficial uses include irrigation, mining, stock watering, recreation, commercial, industrial, and municipal uses. Beneficial use also includes the underlying principle of the appropriative rights system of water allocation, known as “use it or lose it.” In the West, where water resources are scarce, water users must demonstrate an actual beneficial use of water. They cannot speculate in water rights or hold on to water rights they do not actually intend to place to a beneficial use in a timely manner. If they stop using the water, they will lose the water right.

Role of the State Engineer

The State Engineer is the head of the [Nevada Division of Water Resources](#), a division within the Nevada Department of Conservation and Natural Resources. The State Engineer is responsible for administering and enforcing Nevada water law, which includes the appropriation of surface and ground water in the state, and the adjudication of pre-statutory vested water rights, dam safety, and other duties.

The Office of the State Engineer was created by the Nevada Legislature in 1903. Another purpose of the 1903 legislation was to account for existing water use (otherwise known as pre-statutory vested water rights) and to get those rights identified, quantified, and formally recognized in light of the growth that was going to take place; in particular the nation's first reclamation project. The 1903 act was amended in 1905 to create a process for the appropriation of water not already being put to a beneficial use by the filing of an application with the State Engineer.

It was not until the passage of the Nevada General Water Law Act of 1913 that the State Engineer was granted jurisdiction over wells tapping artesian water or water in definable underground aquifers. The 1939 Nevada Underground Water Act granted the State Engineer jurisdiction over all groundwater in the state. The 1913 and 1939 acts have been amended many times, and Nevada's water law is considered one of the most comprehensive water laws in the West.

The Appropriation Process

All manners of use of water in Nevada require a permit from the State Engineer with two exceptions – domestic use and those uses that pre-date water law requirements. Two main chapters in the Nevada statutes govern the appropriation and regulation of water in Nevada. Nevada Revised Statute Chapter 533 is the general water law that provides for the appropriation process and is specifically applicable to surface water. Nevada Revised Statute Chapter 534 is specific to groundwater and works in conjunction with Chapter 533.

Domestic Water Wells

A water-right application or permit is not required in order to drill a domestic well. Domestic purposes as defined by law extends to culinary and household purposes, in a single family dwelling, the watering of a family garden, lawns, and the watering of domestic animals. The maximum amount of water that may be pumped from a domestic well is limited to two acre-feet per year.

Water Right Applications and Protests

To acquire permission to use water, a person must file an application with the State Engineer. The application must be supported by a map prepared in a prescribed form by a water rights surveyor. The map must show the point of diversion and place of use of the water within proper legal subdivisions. No application shall be for the water of more than one source to be used for more than one purpose.

When the application and map are properly completed, a notice is sent to a newspaper of general circulation in the area where the water is to be diverted. This notice is published for four (4) consecutive weeks and any interested person may file a formal protest, but the protest must be filed within 30 days after the last day of publication. There are no exceptions to the protest period. The protest must explain the objections with reasonable certainty or may suggest other appropriate action by the State Engineer.

After the expiration of the protest period, the application is ready for action by the State Engineer. If a protest is filed, the State Engineer may conduct either a field investigation or an administrative hearing or both. If the State Engineer has sufficient information, he may act on the application without either, or he may request additional information from the applicant. The State Engineer by statute is given the discretion as to whether or not to hold an administrative hearing.

When considering an application for approval or denial, the State Engineer must consider the following:

- Is there a beneficial use for the water, i.e., is it a viable project?
- Does the applicant intend in good faith and with reasonable diligence to construct the necessary works to put the water to beneficial use?
- Does the applicant have the financial ability and a reasonable expectation to actually construct the necessary works to put the water to beneficial use with reasonable diligence?
- Is there unappropriated water at the source?
- Will the use of the water under the proposed application conflict with existing rights or protectable interests in domestic wells?
- Will the use of the water under the proposed application threaten to prove detrimental to the public interest?

In addition to these items, there are other statutory criteria for consideration that address such things as irrigation districts and interbasin transfers of water.

Application Approval or Denial

The State Engineer reviews any pertinent information and either approves or denies the application. The application can either be:

- Approved as requested
- Approved with conditions, including
 - a monitoring plan
 - reporting of actual pumpage
 - limiting the depth of the well
 - reducing the rate of flow and total volume of water applied for
 - Denied.

When an application is denied, the State Engineer notifies the applicant of denial and does not take any further action regarding the application. The State Engineer's decision on an application may be appealed, within 30 days, in state district courts or, in some instances, in federal courts that retain jurisdiction over decreed water rights.

When a water permit is approved, the requirements and limitations are specified in what are called permit terms. A fee set by statute is also required for the issuance of any permit. Included within the permit terms are time limits for filing proof of completion of works of diversion and proof of beneficial use. Failure to file either of these statutorily required documents results in cancellation of the water right. Only once a permit is issued may the permittee initiate the work to divert and use the water.

Once granted, water rights in Nevada have the standing of both real and personal property, meaning they are conveyed as an attachment to real property unless they are specifically excluded in the deed of conveyance.

Water rights can be lost by cancellation, forfeiture, or abandonment.

Interbasin Water Transfers

Due to the state's arid climate and limited water resources, transferring water from one basin to another is not new to Nevada. In fact, the first interbasin transfer occurred in 1873 when water from Hobart Reservoir in the Washoe Valley Hydrographic Basin was conveyed to Virginia City, which is within the Dayton Valley Hydrographic Basin, during the city's heyday of silver mining. Many interbasin transfers have been completed since then in nearly every region of the state. In addition to the criteria listed earlier, in determining whether an application for an interbasin transfer of water should be approved or rejected, the State Engineer must also consider:

- Whether the applicant has justified the need to import the water from another basin
- If the State Engineer determines that a conservation plan is advisable for the basin into which water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out
- Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported
- Whether the proposed action is an appropriate long-term use that will not unduly limit the future growth and development in the basin from which the water is exported
- Any other factor the State Engineer determines to be relevant.

Intercounty Water Transfers

If an appropriation of groundwater results in the transfer and beneficial use of water in a county other than the county in which the point of diversion is located, the county of origin may impose a fee of \$10 per acre-foot of water. However, the water law also provides that if the county of origin has not imposed a fee on the transfer of water, the permit holder and the county may execute a plan to mitigate the adverse economic effects caused by transferring water out of the county.

The Southern Nevada Water Authority Groundwater Importation Project

In 1989, the Las Vegas Valley Water District filed 146 water-right applications to appropriate nearly all of the unappropriated groundwater in 27 hydrographic basins, for a total appropriation of 180,000 acre-feet of groundwater. It later withdrew 32 applications from 10 of the basins and other applications were transferred to Lincoln County. Most of the applications have been assigned to the Southern Nevada Water Authority, which was created after the filing of the applications. Permits have been granted in the following areas:

- Garnet and Hidden Valleys–2,200 afa
- California Wash–2,500 afa
- Tikapoo Valley North –2,587 afa
- Tikapoo Valley South –1,700 afa
- Three Lakes Valley North –3,700 afa
- Three Lakes Valley South –2,618 afa

Permits were granted on applications filed in Spring Valley, Cave Valley, Delamar Valley, and Dry Lake Valley; however, the Nevada Supreme Court held that the statutory process for postponing action on the applications had not been followed and remanded consideration of the applications back to the State Engineer with the requirement that the protest period be re-opened. The applications were republished in early 2011, which re-opened the protest period, and new hearings are scheduled for the fall of 2011. The new hearings do NOT include Snake Valley, so the total acre-feet of groundwater requested by SNWA of Delamar, Dry Lake, Cave and Spring Valleys is 125,976 acre-feet. There are applications pending in other hydrographic basins that have not been acted on, and the protest period on those applications will also be re-opened when the State Engineer is ready to move forward with action on the applications.

Important Concepts and Definitions

Who Owns Water in Nevada?

All sources of water within the boundaries of the state, above and below ground, belong to the public (NRS 533.025 and 534.020).

Prior Appropriation Doctrine

- First in time, first in right (senior priority gets to use water first)
- Beneficial use is the basis, the measure, and the limit of the water right
- Use it or lose it (forfeiture and abandonment)

An Acre-Foot of Water

325,851 gallons, or an acre of ground (4,840 square yards or 43,560 square feet) covered with one foot of water.

Surface Water

Most surface water was being used prior to state water law; therefore, most surface water has been or will be required to be adjudicated, which is a statutory process by which pre-statutory vested water right claims are quantified and finally judicially decreed. Most surface water not claimed prior to 1905 has been appropriated according to current water law.

Groundwater

Nevada is divided into 256 hydrographic basins, which are geographic drainage areas. Generally, each basin is considered a separate source of water. There was very little development of groundwater within the hydrographic basins in Nevada until the 1960s. Basins today are regulated using various tools, including basin designation and regulation.

Under certain conditions, the State Engineer may designate a groundwater basin and, in the interest of public welfare, declare preferred uses (e.g., municipal and industrial, domestic, agriculture, etc.) – 120 of the 256 groundwater basins in Nevada are designated or partially designated.

Perennial Yield

Perennial yield is the maximum amount of groundwater that can be salvaged each year over the long term without depleting the groundwater reservoir. The perennial yield cannot be more than the natural recharge of the groundwater reservoir and is usually limited to the maximum amount of natural discharge.

Over-appropriated Basins

Approximately 45 basins in Nevada are over-appropriated; this means that more groundwater is allocated for use than is available. There is a historical reason for why these basins are considered over-appropriated. Some were already over-appropriated prior to the perennial yield being known. New data changed the perennial yield in some basins, which meant that the basins ‘became’ over-appropriated.

Another reason is that when water was allocated, not all of the water rights would be put to their *maximum* beneficial use. The Las Vegas Valley was purposefully allowed to overdraft water resources with the hope that infrastructure would eventually be in place to deliver Colorado River water and thereby replace the groundwater pumping.

In some basins, the success rate of the Carey Act, also known as the Desert Land Act, of 1894 exceeded expectations of putting water to beneficial use, and therefore the basins became overappropriated; for example, 18 percent in Diamond Valley versus a 3-percent success rate statewide.

Lastly, basins can be over-allocated based on the number of domestic wells alone that are exempt from obtaining a water right.

What Can be Done?

The State Engineer’s Office is using a range of management tools to bring groundwater systems back into balance. These include:

- Grant changes of irrigation rights for consumptive portion only
- Cancel water rights for failure to show due diligence
- Forfeit unused certificated rights
- Deny all extension of time requests and call for proofs of beneficial use
- Substitutive uses in the case of mine dewatering
- Exchange of treated effluent for potable water
- Recharge projects
- Conjunctive use of all sources
- Regulate by priority
- Declare critical management areas

Other tools that are used to regulate groundwater withdrawals:

- Designate groundwater basins
- Declare preferred uses
- Require totalizing meters be installed on all permitted wells
 - Impose fines and penalties for over pumping
 - Permit terms requiring
- Totalizing meters on diversions
- Water usage reporting
 - Monitor the Basins
- Pumpage inventories
- Groundwater level measurements

Groundwater Management Success

Dividing the state into hydrographic basins and establishing perennial yields (water availability) has provided a framework for which to issue permits. Although there have been basins over appropriated, without any estimate of water availability, the number of over appropriated basins would be much, much higher.

Nevada's water law also provides tools to reallocate water from non-use to those who have a beneficial use, such as cancellation, forfeiture, expiration, and the abandonment of rights.

Other Important Concepts

- *Supplemental Rights*—two or more rights used together for an intended use.
- *Co-mingled Rights*—where more than one source, such as surface water and groundwater, or groundwater and effluent, are used together for an intended use.
- *Preferred Uses*—manner of uses designated as such by the State Engineer, such as municipal, commercial, etc.

Water Right Ownership

The *use* of a water right is considered a property right and can be bought and sold like any other property. Water rights are exchanged, bought, and sold between private parties. The State Engineer does not assign title or ownership of water rights; he only confirms the Report of Conveyance (ROC). ROCs are used to determine a change in ownership of a water right, and they must be filed in the State Engineer's office. If ROCs are not filed with the office, there is no way of knowing if there has been a change of ownership. If there is a dispute in title, water right claimants must take this dispute to a court of law.

Water Rights Purchases

When water rights are purchased or sold as personal property or treated as an appurtenance (attachment) in a real-estate transaction, the water rights are conveyed specifically by a deed of conveyance. It is possible to buy or sell water rights and change the water's point of diversion, manner of use, and place of use by filing an application with the State Engineer.

Maintaining a Water Right

Once a permit has been issued, conditions are imposed in order for that water right to be perfected, which means placed to beneficial use. Time frames are established for filing proof of completion of diversion works and proof of beneficial use. A water right can be perfected only if the completion of the diversion works is made and the water is placed to the beneficial use in the manner and place for which the permit was granted.

By law (533.380), the State Engineer is limited on the amount of time he can give the applicant to file the two proofs:

- A maximum time limit – within five years – in which work must be completed, and
- The beneficial use must be established within 10 years after the date of approval of the permit.

Failure to submit these proofs by the time specified results in the cancellation of the water right.

What if the permittee can't meet these deadlines?

Extensions of time may be filed. The extension must be filed within 30 days from the date of final notice for filing of the proof. The extension, if accepted, is good for up to one year. A person requesting the extension must submit the reason or reasons as to why an extension is necessary. The State Engineer, when reviewing any extension, shall consider whether the permittee has been proceeding in good faith and reasonable diligence to complete the work or put all of the water to beneficial use.

Failure to file this extension of time results in the cancellation of the permit. If a water right is cancelled, the law provides for the filing of a petition for review of the cancellation within 60 days of the date of the cancellation and provides for an administrative procedure, including a hearing, for the review of a cancellation of a permit. If a permit is reinstated as a result of the cancellation hearing, the penalty is that the water-right holder loses the priority date of the permit making it most likely the most junior water right in the hydrographic basin.

Certificate of Appropriation

After an application is granted, it is called a water right permit. As mentioned, that permit has dates certain by which proofs must be filed with the State Engineer. If all the terms of the permit are complied with, the State Engineer prepares a Certificate of Appropriation. The certificate establishes the final parameters of the water right, which includes the rate of diversion and the

quantity of water to be diverted. The State Engineer records the Certificate in his office and a copy is provided to the permit holder.

Forfeiture and Abandonment

A certificated groundwater right can be lost by forfeiture or abandonment – “use it or lose it.” Surface water rights can only be lost by abandonment. A review of whether or not a surface water right has been abandoned is based on a review of all the surrounding circumstances; however, water law provides statutory reasons that prevent a declaration of abandonment. Forfeiture of a groundwater right occurs if there is a failure to use the water right for five consecutive years.