

**ADOPTED REGULATION
OF THE STATE ENGINEER**

LCB File No. R012-26

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§ 1-6, NRS 532.120 and 533.380.

A REGULATION relating to water; revising certain definitions relating to the appropriation of water; revising certain requirements relating to an application for an extension of time to file proof of completion or proof of beneficial use; revising certain factors that the State Engineer will consider when considering such an application; revising the timeframe in which the Division of Water Resources of the State Department of Conservation and Natural Resources must review certain regulations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Upon approving an application for a permit to appropriate water, existing law: (1) requires the State Engineer to set deadlines by which construction related to the appropriation of water must be completed and an application of water to a beneficial use must be made, respectively; and (2) authorizes the State Engineer, under certain circumstances, to extend those deadlines. Additionally, existing law requires the State Engineer to adopt regulations to carry out these provisions. (NRS 533.380)

Sections 1 and 2 of this regulation revise the definitions of certain terms relating to the measure of reasonable diligence by which an applicant to appropriate water is pursuing the perfection of the appropriation.

Existing regulations require an application for an extension of time to file proof of completion or proof of beneficial use to include certain information including: (1) a written summary of the work performed to perfect the appropriation; and (2) a detailed written explanation of the work expected to be performed if the extension is granted. (NAC 533.480)

Section 3 of this regulation instead requires the application to include: (1) for the first application submitted for an extension of time, a written summary of the work performed; and (2) a detailed written plan setting forth the work expected to be performed during each year of the requested extension. **Section 3** also eliminates the requirement that an applicant for an extension of time submit a written summary of any previous extension applications submitted since December 22, 2021.

Existing law requires an application for an extension to be accompanied by proof and evidence of the good faith and reasonable diligence with which the applicant is pursuing the perfection of the application. (NRS 533.380) Existing regulations provide that in determining whether the applicant has demonstrated good faith and reasonable diligence, the State Engineer will consider certain evidence of meaningful action taken towards perfecting the appropriation

based on the manner of use of the water. (NAC 533.480) **Section 4** of this regulation instead provides that, in determining whether the applicant has demonstrated good faith and reasonable diligence, the State Engineer will consider: (1) certain evidence of affirmative and meaningful action taken by the applicant, regardless of the manner of use of the water, towards perfecting the appropriation in a reasonably expedient and efficient manner; and (2) a statement of intent to place the water to beneficial use in the future, if the State Engineer determines the statement is supported by actual evidence.

Existing regulations set forth certain factors the State Engineer will consider when evaluating whether to approve an application for extension. (NAC 533.490) **Section 5** of this regulation: (1) eliminates the requirement that the State Engineer consider the number of prior applications for an extension of time submitted by the applicant since December 22, 2021; and (2) provides that the State Engineer will also consider whether any delay in perfecting the appropriation is directly related to the efforts necessary to place the water to beneficial use in the manner intended by the permit for which the extension is sought.

Existing regulations provide that the Division of Water Resources of the State Department of Conservation and Natural Resources will review certain regulations at least once every 3 years to determine whether the regulation should be amended or repealed. (NAC 533.500) **Section 6** of this regulation instead provides the Division will review such regulations at least once every 5 years.

Section 1. NAC 533.450 is hereby amended to read as follows:

533.450 For the purposes of NRS 533.380 and 533.395:

1. “Integrated system” means a complex or unitary ~~[whole]~~ *system* consisting of separate, integrated and interrelated elements ~~[. The term includes, without limitation, a ranch with multiple irrigated fields and the components of a water system.]~~ *to place water to beneficial use.*

2. “Steady application of effort” means, under all the facts and circumstances and as demonstrated by evidence, affirmative and meaningful action taken by the holder of a permit to perfect an appropriation before the time set by the State Engineer pursuant to NRS 533.380, including, without limitation, any extension previously granted by the State Engineer.

Sec. 2. NAC 533.460 is hereby amended to read as follows:

533.460 For the purposes of NRS 533.380 and 533.395 and NAC 533.390 to 533.500, inclusive, the term “project” means a planned enterprise or undertaking ~~[pursued individually or collaboratively to achieve a specific goal. The term includes, without limitation, a subdivision~~

~~with multiple phases.],~~ *which may include, without limitation, multiple phases to fully place water to beneficial use.*

Sec. 3. NAC 533.470 is hereby amended to read as follows:

533.470 1. An application for an extension of time to file proof of completion or proof of beneficial use pursuant to NRS 533.380 must be made on the form prescribed by the Office of the State Engineer and, in addition to the requirements of subsection 3 of NRS 533.380, must include, without limitation:

(a) The number of years the applicant is requesting to extend the time in which to file proof of completion or proof of beneficial use and an explanation for the amount of time requested;

(b) ~~[A]~~ *For the first application for an extension of time, a* written summary of the work performed to perfect the appropriation ~~[, beginning on the date the permit was issued;]~~ *since the State Engineer issued the permit to appropriate water;*

(c) If the application for an extension *of time* is for a municipal or quasi-municipal use, any information required to address the factors considered by the State Engineer pursuant to subsection 4 of NRS 533.380;

~~(d) [A written summary of any previous applications for an extension of time that have been submitted by the applicant since December 22, 2021, which must include, without limitation, the number of years granted for each previous application filed;~~

~~—(e)]~~ If any previous application for an extension of time has been granted, a detailed written summary of the work actually performed during the previous extension period and evidence documenting the work performed during the previous extension period ~~[, which may include, without limitation, receipts, photographs, construction plans or any other evidence of reasonable diligence in the construction of work or applying water to beneficial use;~~

~~(f)~~;

(e) A detailed written ~~[explanation of]~~ *plan setting forth* the work expected to be performed ~~[if the extension is granted];~~

~~(g)~~ *during each year of the requested extension period;*

(f) Any meaningful action taken by the applicant to perfect the appropriation as described in NAC 533.480;

~~(h)~~ (g) Any other information that the applicant believes demonstrates the need for the extension; and

~~(i)~~ (h) Any other information requested by the State Engineer.

2. The State Engineer will not consider any protest or objection to an application for an extension of time.

Sec. 4. NAC 533.480 is hereby amended to read as follows:

533.480 1. When considering whether an applicant has demonstrated good faith and reasonable diligence to perfect an appropriation as required by NRS 533.380, the State Engineer will consider ~~[evidence]~~ :

(a) *Evidence* of the applicant's steady application of effort towards perfecting the appropriation and any other *affirmative and meaningful* action taken by the applicant towards perfecting the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances that are submitted by the applicant ~~[, including.];~~ *and*

(b) *An applicant's statement of intent to place the water to beneficial use in the future if the State Engineer determines the statement is supported by actual evidence.*

2. *As used in this section, "affirmative and meaningful action" includes,* without limitation:

(a) ~~For all manners of use, as applicable:~~

~~— (1) The drilling and equipping of a well at the point of diversion;~~

~~— (2)] *Efforts to physically construct, maintain or upgrade diversion works or systems for transporting, distributing and applying water to beneficial use;*~~

(b) The installation of ~~a meter at the location of discharge of the well;~~

~~— (3) The installation of pipes or ditches to convey water to the place of use;~~

~~— (4) The installation of a headgate, weir, dam or other diversionary structure at the point of diversion;~~

~~— (5) The improvement of a spring;~~

~~— (6)] *suitable measuring devices as required by the terms of the permit to appropriate water;*~~

(c) The placement of ~~a portion of~~ the water to beneficial use in accordance with the terms of the permit to appropriate water ~~;~~

~~— (7) Actions undertaken to complete the permitting or licensing requirements of any], especially where the use of the water increases over time;~~

(d) *Obtaining or actively pursuing permits, licenses or other approvals required by a federal, state or local agency; and*

~~[(8) Any other action considered by the State Engineer to constitute significant progress in the perfection of a water right;~~

~~— (b) For commercial use, the construction of infrastructure and facilities;~~

~~— (c) For construction use:~~

~~— (1) The number of trucks filled from a standpipe for dust control or compaction; and~~

- ~~— (2) The progress of all projects where the water for which the permit has been issued is used;~~
- ~~— (d) For domestic use, any activity performed in preparation for the construction of a single family residence or an accessory dwelling unit, including, without limitation, drafting construction plans, applying for permits to build or securing easements;~~
- ~~— (e) For industrial, utility, mining, milling or dewatering use, the construction of facilities, including, without limitation, foundations, buildings, power plants, processing plants, piping and instrumentation;~~
- ~~— (f) For irrigation use:
 - ~~— (1) The installation of sprinklers, wheel lines, pivots or other components of an irrigation system; and~~
 - ~~— (2) The construction of ditches, berms, check dams or any other structure used to deliver and control water on the field within the place of use;~~~~
- ~~— (g) For supplemental irrigation use, the irrigation performed under the primary right to appropriate water;~~
- ~~— (h) For municipal or quasi-municipal use:
 - ~~— (1) The number of completed units in the subdivision or water system;~~
 - ~~— (2) The dedication of a right to appropriate water to a subdivision, parcel or tract and the recording of the associated map within the place of use;~~
 - ~~— (3) Whether the application is consistent with the water resource plan required pursuant to NRS 278.0228; and~~
 - ~~— (4) The granting of any state or local approval, including, without limitation, approval from the Public Utilities Commission of Nevada;~~~~

~~—(i) For recreational use, the construction of any infrastructure necessary for recreational purposes; and~~

~~—(j) For stockwater or wildlife use:~~

~~——(1) The construction of wind turbines, solar panels, diesel engines or any other power sources;~~

~~——(2) The construction of pipes, float valves, troughs, spring boxes or any similar device;~~

~~——(3) The placement of livestock on the land to which the livestock is appurtenant in accordance with the requirements of chapter 533 of NRS; and~~

~~——(4) The securing of]~~

(e) Obtaining or actively pursuing legal access to the place of diversion or place of use, such as public lands . ~~[through the appropriate agency.~~

~~—2.— As used in this section, “supplemental irrigation use” means the use of an additional appropriation of water for irrigation purposes which does not exceed the total duty of the existing appropriation of water to supplement the existing appropriation at the place of use of the existing appropriation during a period when the full amount of the existing appropriation is unavailable.;~~

Sec. 5. NAC 533.490 is hereby amended to read as follows:

533.490 In reviewing an application for an extension of time to file proof of completion or proof of beneficial use submitted pursuant to NRS 533.380, the State Engineer will consider, without limitation:

1. ~~[The number of prior applications for an extension of time submitted by the applicant since December 22, 2021;~~

~~—2.]~~ The consistent, measurable efforts of the applicant to perfect the appropriation, including, without limitation:

(a) Whether the applicant has consistently completed the actions to perfect the appropriation set forth by the applicant in previous applications for an extension;

(b) Any *affirmative and* meaningful ~~{actions}~~ *action* set forth in NAC 533.480 taken by the applicant to demonstrate his or her good faith and reasonable diligence to perfect the appropriation; ~~{and}~~

(c) Any explanation provided by the applicant for his or her failure to perfect the appropriation by the date set forth in his or her permit or previous application for an extension;
and

(d) Whether any delay in perfecting the appropriation is directly related to the efforts necessary to place the water to beneficial use in the manner intended by the permit for which the extension is sought;

~~{3.}~~ 2. The number of years for which the applicant is requesting an extension;

~~{4.}~~ 3. Whether the applicant has demonstrated good faith and reasonable diligence in constructing works and placing water to beneficial use;

~~{5.}~~ 4. Whether the hydrographic basin in which the permit to appropriate water has been issued has been designated a critical management area by the State Engineer pursuant to subsection 7 of NRS 534.110 or whether there is a groundwater management plan for the basin approved by the State Engineer pursuant to NRS 534.037;

~~{6.}~~ 5. Whether the application is subject to any order of the State Engineer;

~~{7.}~~ 6. Any regulatory or economic conditions or natural disasters which make the applicant unable to construct the works and place water to beneficial use;

~~{8.}~~ 7. Any actions taken by the applicant to comply with an order of the State Engineer;
and

~~19.~~ 8. Any other information the State Engineer determines is relevant.

Sec. 6. NAC 533.500 is hereby amended to read as follows:

533.500 The Division of Water Resources of the State Department of Conservation and Natural Resources will review the provisions of NAC 533.390 to 533.500, inclusive, at least once every ~~3~~ 5 years to determine whether the provisions of NAC 533.390 to 533.500, inclusive, should be amended or repealed.