

Jordan,

Resource Concepts Inc. would like to provide the attached written public comment for R169-20, on the agenda to be heard before the Legislative Commission December 21, 2021.

If you have any questions, please give us a call or send me an email.

Regards,

Shannon McDaniel, P.E., WRS
Senior Water Rights Surveyor

Resource Concepts Inc.



December 21, 2021

Via Email

Nevada Legislative Commission
401 S. Carson Street
Carson City, Nevada 89701

Subject: Written Comments, State Agency Regulation to be Reviewed by the Legislative Commission, Adopted Regulation of the State Engineer, LCB File No. R169-20

Dear Commissioners:

Resource Concepts, Inc. (RCI) represents a wide variety of water right permittees and applicants that cover the spectrum of water right manners of use. RCI provides the following comments regarding the Adopted Regulation of the State Engineer, LCB File No. R169-20 adopted by the State Engineer on November 10, 2021. RCI recognizes that several modifications were made by Nevada Division of Water Resources (NDWR) when comparing the Adopted Regulations and the initial Draft Regulations presented during the public workshop held January 12, 2021. RCI had submitted written comments to the NDWR during a public workshop and during the public hearing. The comments provided below address prior comments submitted by RCI as well as new comments resulting from the final changes presented in the agency adopted regulations.

Sec. 4.

- The definition of "beneficial use" is more fully defined within the definition of the same proposed in the Draft Proposed Regulation of the State Engineer LCB File No. R125-20. RCI would encourage the use of the fuller version of the definition found in LCB File No. R125-20.

Sec. 5, Sec. 6, Sec. 7, Sec. 11(1)(a)(6) and Sec. 12(5).

- The language adopted limit these definitions to apply only to permits to appropriate, excluding permits to change water previously appropriated.

Sec. 9(2).

- RCI supports the language adopted defining "steady application of effort."

Sec. 10.

- Existing information contained within the permit file should be evidenced through citation rather than resubmittal. As the official record keeper, the Office of the State Engineer has the records for each appropriation, including individual applications for extension of time. We believe that requiring duplicative submittals, in the form of "A written summary of the work performed to perfect the appropriation, beginning on the date the permit was issued" as required by Sec. 10(1)(b) and "A written summary of any previous applications for an extension of time that have

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been submitted by the applicant since the effective date of this regulation, which must include, without limitation, the number of years granted for each previous application filed” as required by Sec. 10(1)(d), already contained within the permit files, is unnecessarily burdensome for the applicant and the State Engineer.

In Number 7 of the statement submitted by the NDWR for LCB File No. R169-20, the NDWR asserts that the dedication of additional time to prepare an extension of time is only anticipated for the first year in which an applicant files for an extension, and that should subsequent extensions be necessary, the NDWR expects that applicants will be able to update the information from the prior application to provide the requisite information. While RCI recognizes that the NDWR has taken measures to ensure that information can be copied over into the electronic format of the extension forms, not all extensions of time are submitted electronically to the State Engineer. In such instances, the filing of a subsequent extension will require additional time, compounding each time the filing of an extension is required.

- RCI supports the State Engineer in not considering a protest or objection to an application for an extension of time. To move towards beneficial use, a water rights permittee needs to be given a clear response regarding its status. A protest or objection to an extension of time creates an unnecessary outside injection of expenses and uncertainties for the permittee as well as for other permitting agencies and financial institutions. If a party feels aggrieved by the progress or lack of progress that a permittee is making in the reasonable and orderly development of the project or good faith in placing the water to beneficial use, that party can submit the information that details their concern in a letter of concern to the State Engineer at any time.

Submitting a protest to an extension of time to stop the orderly processing by the State Engineer of considering any extension disrupts the orderly allocation, development, and management of the resources of the State by substituting a slow, burdensome, disruptive and expensive legal process for a much more efficient, technically based consideration by the State Engineer. A protest to an extension of time typically does not run its course for many months or years, leaving the permittee in legal limbo for much longer than the extensions of time requested.

Sec. 11.

- RCI appreciates the State Engineer recognizing in Subsection A, that applicants of extensions of time may be subject to completing any permitting or licensing requirements of any federal, state, or local agency. The inclusion of “orders” should be considered for inclusion as a fact and circumstance, along with any permitting or licensing requirement.
- In addition to an applicant completing the permitting or licensing requirements being recognized as demonstrating good faith and reasonable diligence, RCI would encourage the inclusion of language that recognizes maintaining compliance with the terms of the acquired permits, licenses or orders as demonstrating good faith and reasonable diligence.
- RCI would encourage the addition of language under subsection h, addressing applications of water subject to water conservation plans pursuant to NRS 540 “Whether the application is

consistent with the water conservation plan required pursuant to NRS 540.131." It is important to note that NRS 540.131 is also applicable to industrial and domestic manners of use.

Sec. 12.

- A review of an applicant's demonstration of "good faith and reasonable diligence" to perfect an appropriation has been criticized as being subjective. However, the State Engineer has been reviewing extensions of time against these criteria successfully and objectively as shown through his historical actions. The State Engineer is the statutory expert, and his review and determination should continue to be recognized moving forward as it has been in the past.
- RCI would encourage the addition of language that recognizes permits which are in litigation "Whether the application is subject to legal proceedings."
- RCI would encourage the inclusion of the language "permits, licenses and orders" and would also encourage language that recognizes maintain compliance with the terms of the acquired permits, licenses or orders as demonstrating good faith and reasonable diligence.

Additional Considerations

- If the State Engineer requires additional information to decide on an extension of time, it can be requested as needed, on a case-by-case basis, for any application, although not currently required by statute or regulation. Requiring all data to be filed every time is unnecessarily burdensome for the applicant. Furthermore, the State Engineer is then required to archive these duplicative documents.
- To reduce the number of applications for extension of time, the State Engineer should consider future statutory changes that extend the allowable number of years associated with a permit's deadlines under specific project types.


While generally in favor of these agency adopted regulations, RCI believes that further work in the development of these regulations be performed prior to legislative approval. As written, the regulations will prove to be unnecessarily burdensome on applicants for an extension of time and increasingly laborious on the NDWR, requiring a need for additional staff and resources. Significant costs will be incurred by applicants for the preparation of an extension and also by the State Engineer for the review and storage of the filings. RCI is committed to the resource and to the public and would readily participate should the Commission find additional workshops or meetings necessary.

RCI appreciates the Commission's consideration of these comments and attention to this matter. If there are any questions or additional inquires of RCI, please contact our office at 775-883-1600.

Sincerely,



Bruce Bruce R. Scott, P.E., WRS



Shannon McDaniel, P.E. WRS

SM/ca