

STEVE SISOLAK
Governor

STATE OF NEVADA

BRADLEY CROWELL
Director

ADAM SULLIVAN, P.E.
Acting State Engineer



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

**NOTICE OF WORKSHOP TO SOLICIT COMMENTS
ON PROPOSED REGULATION**

The Nevada Division of Water Resources is proposing the Amendment and Adoption of regulations pertaining to chapter 532 of Nevada Administrative Code. A public workshop has been set for

9:00 A.M., ON JUNE 18, 2021

**Division of Water Resources
Tahoe Hearing Room
901 S. Stewart Street, Suite 2002
Carson City, NV 89701**

The Workshop will also be broadcast over the internet at <https://call.lifesizecloud.com/3952424> or using Skype for Business at <https://skype.lifesizecloud.com/3952424> or via telephone by calling (312) 584-2401, Workshop extension: 3952424#

The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations, which includes:

- Adopting new regulations pursuant to Assembly Bill 62 of the 2019 Nevada Legislative Session, relating to applications for extensions of time to file a proof of construction of works and proof of beneficial use (LCB File No. R169-20 available at <https://www.leg.state.nv.us/Register/2020Register/R169-20P.pdf>).

A copy of all materials relating to the proposal may be obtained from the Nevada Division of Water Resources website at <http://www.water.nv.gov>, by contacting the Division at 901 S. Stewart Street, Suite 2002, Carson City, Nevada, 89701, (775) 684-2800. A reasonable fee for copying may be charged. The agency's small business impact statement is attached.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

CARSON CITY

Bryan Building
901 S. Stewart Street
Carson City, NV

Nevada State Library and Archives
100 N. Stewart Street
Carson City, NV

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV

ELKO

Nevada Division of Water Resources
Elko Office
1250 Lamoille Hwy, Suite 1047
Elko, NV

LAS VEGAS

Nevada Division of Water Resources
Southern Business Office
400 Shadow Lane, Suite 201
Las Vegas, NV 8916

Grant Sawyer Building,
555 E. Washington Avenue
Las Vegas, NV

INTERNET WEBSITES

Nevada Public Notice Website
<https://notice.nv.gov/>

Legislative Council Bureau
www.leg.state.nv.us

Nevada Division of Water Resources
www.water.nv.gov

Nevada Department of Conservation and
Natural Resources
www.dcnr.nv.gov

The Nevada Division of Water Resources is pleased to make reasonable accommodations for individuals with disabilities who wish to participate in the meeting. If special arrangements for the meeting are necessary, please notify Juanita Mordhorst at (775) 684-2800 or jmordhorst@water.nv.gov no later than five working days before the meeting.



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REGULATIONS PUBLIC WORKSHOP

DATE: June 18, 2021
TIME: 9:00 a.m.

AGENDA

Workshop materials are available on the Division of Water Resources' website at:
<http://water.nv.gov/>

**The Public Workshop will be conducted at:
Division of Water Resources
Tahoe Hearing Room
901 S. Stewart Street, Ste. 2002
Carson City Nevada, 89701**

**The Workshop will also be broadcast on the internet at
<https://call.lifesizecloud.com/6895257> or using Skype for Business at
<https://skype.lifesizecloud.com/6895257> or via telephone by calling 1 (877)-422-8614,
Workshop extension: 6895257#**

1. Call to Order
2. Presentation on Proposed Amendments and Additions to NAC Chapter 532:
 - a. Adopting new regulations pursuant to Assembly Bill 62 of the 2019 Nevada Legislative Session, relating to applications for extensions of time to file a proof of construction of works and proof of beneficial use (LCB File No. R169-20 available at <https://www.leg.state.nv.us/Register/2020Register/R169-20P.pdf>).
3. Public Comment
4. Adjournment

This workshop will be conducted in accordance with the Open Meeting Law (NRS 241.020).

NOTE: Comments by the general public will be taken following a description of the proposed regulation changes. Public comment may be limited to 5 minutes per person at the discretion of the staff member conducting the workshop.

If anyone has questions or wishes to discuss in further detail, the items scheduled for this regulations workshop, please contact Micheline Fairbank at mfairbank@water.nv.gov.

Notices have been posted on the Division of Water Resources' website at www.water.nv.gov and at the following locations:

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PROPOSED REGULATION OF THE STATE ENGINEER

LCB File No. R169-20

June 18, 2021

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of *green bold underlining* is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

AUTHORITY: §§1-13, NRS 532.120 and 533.380.

A REGULATION relating to water; setting forth the requirements for applying for an extension of time within which construction work must be completed or water must be applied to a beneficial use; setting forth various factors that the State Engineer will consider when considering such an application; and providing other matters properly relating thereto.

Section 1. Chapter 533 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person who files an application pursuant to NRS 533.380 for an extension of time within which to complete construction work or apply water to beneficial use.*

Sec. 4. *“Beneficial use” means the use of water in the quantity necessary for the stated purpose of the appropriation of the water, ~~which includes, without limitation, the manner of use, the period of use, the place of use and point of diversion.~~*

Sec. 5. *“Perfect an appropriation” or “perfect the appropriation” means:*

1. Carrying out all the requirements of a permit to appropriate water to place water to

beneficial use which is finalized through the issuance of a certificate of appropriation and may include, without limitation, constructing diversion works, installing measuring devices, submitting proof of completion, placing water to beneficial use and submitting proof of beneficial use ~~or~~

~~2. Filing a claim of a vested right to use water which is finalized through the issuance of a judicial decree.~~

Sec. 6. *“Proof of beneficial use” means a verified statement filed with the Office of the State Engineer pursuant to NRS 533.400 demonstrating that the ~~providing a detailed description of how~~ water has been applied to beneficial use as required under the terms of a permit to appropriate water.*

Sec. 7. *“Proof of completion” means a verified statement filed with the Office of the State Engineer pursuant to NRS 533.390 describing ~~providing a detailed description of the~~ works actually constructed to divert water as required under the terms of a permit to appropriate water.*

Sec. 8. *For the purposes of sections 2 to 12, inclusive, of this regulation and NRS 533.380 and 533.395, ~~the State Engineer interprets~~ the term “project” ~~to mean~~ 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.*

Sec. 9. *For the purposes of NRS 533.380 and 533.395, ~~the State Engineer interprets the term :~~*

1. *“Integrated system” ~~to mean~~ means a complex or unitary whole 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.*

2. *“Steady application of effort” ~~to mean~~ means, under all the facts and circumstances*

and as demonstrated by evidence, affirmative and ~~significant~~ 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. 10. *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 written summary of the work performed to perfect the appropriation, beginning on the date the permit was issued;

(c) If the application for an extension 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 description of any previous applications for an extension of time that have 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;

(e) If any previous application for an extension of time has been granted, a detailed written explanation of the work actually performed during the most recent 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) A detailed written explanation of the work expected to be performed if the extension is granted;

(g) Any ~~significant~~ measurable action taken by the applicant to perfect the appropriation as described in section 11 of this regulation;

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

(i) 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. 11. *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 ~~any~~ evidence of ~~significant~~ the applicant's steady application of effort and other ~~action~~ actions toward perfecting the appropriation submitted by the applicant, including, without limitation:*

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

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

(2) 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) 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 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 building permits, 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) *The completion of a water resource plan required by NRS 278.0228;*
 - (4) *Whether a water resource plan required by NRS 278.0228 includes specific and realistic plans for future development; and*
 - (5) *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 stock on appurtenant land consistent with requirements in NRS Chapter 533; and*
 - (4) *The securing of access to 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 to supplement an existing appropriation of water at the place of use of the existing appropriation during a period when the full amount of the existing appropriation is unavailable. A supplemental irrigation use, when combined with the use under the existing appropriation, shall not exceed the total duty of the existing appropriation.*

Sec. 12. *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 the effective date of this regulation;

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 significant actions set forth in section 11 of this regulation 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;

3. The number of years for which the applicant is requesting an extension;

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

5. 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 ~~and, if so,~~ or whether there is an approved groundwater management plan for the basin pursuant to NRS 534.037;

6. Whether the application is subject to any order of the State Engineer; ~~and~~

7. Any economic conditions or natural disasters which make the holder of the permit

unable to construct works and place water to beneficial use;

9. Actions undertaken to comply with an order of the State Engineer; and

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

Sec. 13. NAC 533.020 is hereby amended to read as follows:

533.020 As used in ~~[this chapter,]~~ *NAC 533.010 to 533.380, inclusive*, unless the context otherwise requires, the words and terms defined in NAC 533.030 to 533.090, inclusive, have the meanings ascribed to them in those sections.