RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU

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WATER POLICY AND ISSUES IN NEVADA: AN OVERVIEW

RESEARCH DIVISION STAFF
research@lcb.state.nv.us

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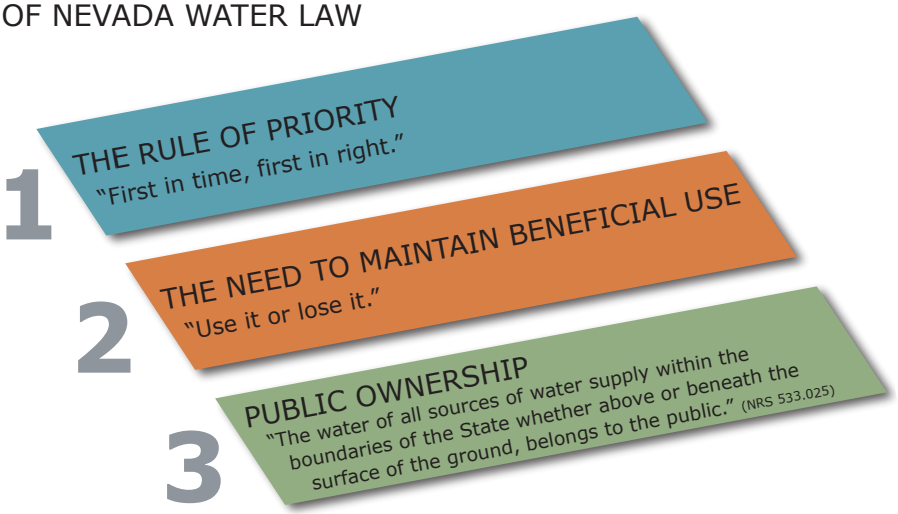
NEVADA WATER LAW

Like 17 other western states, Nevada has adopted the prior appropriation doctrine, meaning the first person to place water to a beneficial use will be considered first for a permanent right to the water, subject to a determination of available unappropriated water. This doctrine was first developed in the 19th century in response to the water needs of mining and agricultural irrigation—uses that were often not located near surface waters. Nevada's water law is now considered one of the most comprehensive water laws in the West. Aside from the Colorado River, which is governed by a series of agreements and legal decisions known as the "Law of the River," all of Nevada's groundwater and surface water resources are managed and governed by the state.

THREE BASIC TENETS OF NEVADA WATER LAW



The basic statutory principles of Nevada water law in use today were adopted in 1913. Nevada began regulating groundwater in 1939, although groundwater development was very limited until the 1960s. Nevada's water law is set forth in Chapters 533 and 534 of the *Nevada Revised Statutes* (NRS). Over the years, numerous court decisions, the Nevada Legislature, and orders of the state engineer have refined the law.

STATE ENGINEER

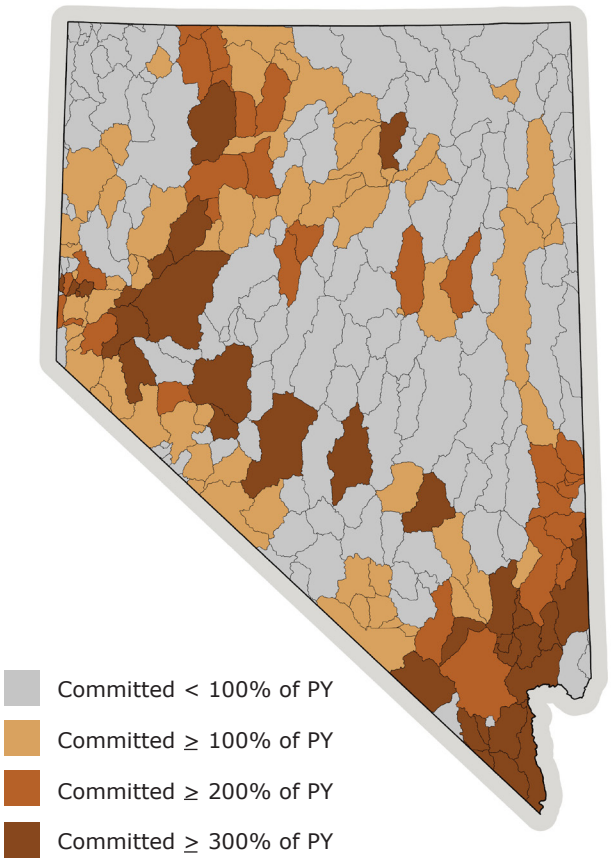
The Office of the State Engineer—created in 1903 and now part of Nevada's Division of Water Resources in the State Department of Conservation and Natural Resources—is responsible for the administration of Nevada water law. The state engineer determines the rights of claimants to water, the use to which water may be put, the quantity of water reasonably required for beneficial use, and where the water may be used.

WATER RIGHTS

Water belongs to the public; however, a right to use water may be obtained by individuals or entities. The primary concepts of Nevada water law are the Rule of Priority ("First in time, first in right") and the Beneficial Use Requirement ("Use it or lose it"). The first to obtain and perfect a water right has priority over other users. Water must actually be put to use for such recognized beneficial uses as: commercial, industrial, irrigation, mining, municipal, power generation, recreation, stock watering, or storage. If the water is not put to beneficial use, the right to such water is lost.

Water rights may be acquired by: (1) adjudicating a right beneficially used prior to the enactment of water law (known as "vested" rights); or (2) applying to the state engineer to appropriate unallocated water and perfecting the right by putting the water to beneficial use (known as "certificated" or "perfected" rights). Domestic wells generally are exempt from the requirement to obtain a permit for water rights.

RATIO OF COMMITTED WATER RESOURCES TO PERENNIAL YIELD (PY) BY BASIN



Source: Nevada's Division of Water Resources

Of Nevada's

256

groundwater basins:

50%

are fully or over-committed; and

25%

are over-committed by more than two times the PY.

SIGNIFICANT WATER RESOURCE ISSUES

OVER-APPROPRIATION

Population growth, increasing urbanization, and recurring drought conditions are putting ever greater demands on Nevada's water resources. Nevada is the most arid state in the nation, and communities throughout the state are working to balance growth and limited water availability. Conversions of water rights from agricultural to municipal and other uses present challenges for rural communities, and potential transfers of water from one basin or county to another have become matters of statewide interest.

Most surface waters in the state were put to use before the 20th century, and Nevada's allocation of Colorado River water is a mere 300,000 acre-feet per year. Thus, new growth in the state—be it agricultural, commercial, industrial, mining, residential, or tourism—generally must look to unappropriated groundwater or to changes in use of existing water rights.

The sustainability of groundwater sources is a critical concern. Nevada's groundwater is divided into 256 hydrographic basins, many of which are over-appropriated, meaning the amount of water resources already committed exceeds the perennial yield of the basin.

DOMESTIC WELLS

As in other western states, the cumulative impact of domestic wells on groundwater supplies is an ongoing concern in Nevada. Domestic wells do not require a water right permit from the state engineer, but they have been deemed a "protectable interest" and are allowed to use up to two acre-feet of water annually. Drought and growth have combined to create increasingly contentious water resource issues related to domestic wells.

RECENTLY ENACTED LEGISLATION

The state engineer, legislative interim committees, Governor Brian Sandoval's Nevada Drought Forum, local water authorities, environmental groups, and others have recently brought numerous water planning and management issues to the attention of the Legislature. These issues resulted in a significant amount of water-related legislation considered during the 2017 and 2019 Sessions. Some of the most noteworthy enacted measures are summarized below.

2017 LEGISLATION

CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUNDWATER

Although NRS addresses groundwater and surface water under separate chapters, science has long recognized that surface and groundwater resources are often hydraulically connected. Senate Bill 47 added a legislative declaration that it is the policy of Nevada to manage conjunctively the appropriation, use, and administration of all waters of this state, regardless of the source of the water. To promote better management of water resources, the measure also required the state engineer to prepare a water budget and inventory of groundwater for each basin in the state.

EXTENSION OF TIME TO WORK A FORFEITURE

Under certain circumstances, Nevada's "use it or lose it" water law doctrine may actually serve as a disincentive for conservation. Assembly Bill 209 revised the criteria considered by the state engineer in determining whether to grant an extension of time to avoid a forfeiture of groundwater rights. New criteria include drought designations and conservation efforts. In groundwater basins where withdrawals consistently exceed the perennial yield, the state engineer may grant an extension of up to three years and may grant multiple extensions.

WATER CONSERVATION PLAN REQUIREMENTS

In such an arid state, water conservation is vital. Senate Bill 74 revised the required contents of water conservation plans to include: (1) a plan to progress toward the installation of meters on all municipal water connections; (2) standards for water efficiency for new development; (3) tiered rate structures to promote water conservation; and (4) watering restrictions based on the time of day and the day of the week.

PROOFS AND ADJUDICATIONS OF PRESTATUTORY VESTED WATER RIGHTS

In recognition of the importance of having an accurate accounting of committed water rights in the state, SB 270 required any claimant of a prestatutory water right to submit proof of the claim to the state engineer on or before December 31, 2027. Senate Bill 51 revised and modernized the process of adjudication of vested water rights.

RAINWATER COLLECTION

Under prior Nevada water law, collection of rainwater was not allowed without a water right permit from the state engineer. However, minimal collection of rainwater can be beneficial for those homeowners looking to conserve water. Assembly Bill 138 allowed for the capture of rainwater from the roof of a single-family dwelling for nonpotable domestic use without a water right. Provided there is no conflict with existing water rights, and other conditions are met, the measure also allowed for the capture of rainwater in a guzzler for use by wildlife.

2019 LEGISLATION

REQUIREMENT TO RESERVE GROUNDWATER

To prevent over-commitment of water in the remaining groundwater basins that are not yet fully appropriated, SB 140 requires the state engineer, in any basin with groundwater that has not been committed for use, to reserve 10 percent of the remaining groundwater. This reserved groundwater will not be available for any use.

EXTENSIONS OF TIME

To address the issue of water rights being tied up unreasonably by extensions of time, AB 62 requires the state engineer to conduct a survey during the 2019–2020 Interim to determine how other jurisdictions in the United States manage extensions of time for the perfection of a water right. A report of the findings will be submitted to the 2021 Legislature. The bill also requires the state engineer to adopt necessary regulations regarding the time for completion of work and the application of water to beneficial use.

WATER LOSS AUDITS AND PLUMBING COMPONENT REQUIREMENTS

Assembly Bill 163 requires each water supplier and public utility that serves 3,300 persons or more to submit the results of a water loss audit along with the water conservation plan they are already required to submit. These entities must also report on their progress toward certain goals. In addition, the bill requires that plumbing components for most new construction, expansions, and renovations in Nevada must be certified under the WaterSense program established by the U.S. Environmental Protection Agency, if that agency has developed final product specifications for the components.

WATER RESOURCE PLAN REQUIREMENTS

To ensure necessary planning for a community's water needs, SB 150 requires, with limited exception, the governing body of a city or county to develop and maintain a water resource plan. Among other information, the plan must include the identification of known water sources available for use and an analysis of the existing and expected future demand for that water.

DOMESTIC WELLS

Under Nevada's system of prior appropriation, domestic wells often have the most junior priority, meaning they may be allowed no water if a curtailment were ordered by the state engineer. To give single family homes that rely on domestic wells some relief in such a scenario, AB 95 provides that if the state engineer or the courts order that withdrawals of groundwater be restricted to conform to priority rights, a domestic well with a water meter installed will still be allowed to withdraw 0.5 acre-feet of water per year.