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STATE OF NEVADA

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State Engineer



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

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NOTICE OF INTENT TO ACT UPON A REGULATION
LCB File No. R169-20
and Hearing Agenda

Notice of Hearing for the Adoption, Amendment or Repeal of Regulations of
The Department of Conservation and Natural Resources, Division of Water Resources

The State of Nevada, Department of Conservation and Natural Resources, Nevada Division of Water Resources ("Division") will hold a public hearing as follows:

DATE: **November 10, 2021**
TIME: **9:00 a.m.**
LOCATION: **Division of Water Resources, Tahoe Hearing Room**
901 S. Stewart Street, Ste. 2002, Carson City, Nevada

You may also participate via video or telephone at
<https://call.lifesizecloud.com/6895257> and (877) 422-8614, 6895257#

Meeting materials are available on the Division's website at <http://water.nv.gov>.

AGENDA

1. Open Hearing: R169-20
2. Presentation and Discussion of Proposed Regulation.

LCB Files No. R169-20. 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.

3. Public Comment. *The Hearing Officer may limit public comments to 3 minutes per speaker but may not restrict comments based upon viewpoint. No action may be taken upon a matter raised under the public comment period unless the matter itself has been specifically included on this Agenda as an action item.*

4. Adjournment.

Note: Any agenda may be taken out of order; items may be pulled or removed from the agenda at any time.

The purpose of the hearing is to receive comments from all interested persons regarding the Adoption of regulations that pertain to chapter 533 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Statement of the need for and the purpose of the proposed regulation or amendment: The Division is proposing to amend NAC 533. Amendments to the existing regulations are proposed to add language in accordance with Assembly Bill 62 of the 2019 Nevada Legislature directing the State Engineer to adopt regulations necessary to carry out the provisions of NRS 533.380.

2. Description of the proposed regulation: Proposed 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. The amendments include:

- a. Definitions;
- b. Requirements for information to be included in an application for extension of time to file proof of completion or proof of beneficial use;
- c. Factors the State Engineer will consider when evaluating and application for extension of time file proof of completion or proof of beneficial use;
- d. Factors that the State Engineer shall consider when evaluating an application for extension of time to file proof of completion or proof of beneficial use; and
- e. A requirement for periodic review of the regulations.

3. The estimated economic effect of the regulation on the business which it is regulate and on the public: There are no economic effects of the regulation on the business that it regulates and no impact on the public.

4. The estimated cost to the agency for enforcement of the proposed regulation: None.

5. Overlap or duplication of regulations: None.

6. Requirement pursuant to Federal law: None.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions: None.

8. New fee or increases an existing fee: None.

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Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing, or via video or teleconference, or may address their comments, data, views, or arguments, in written form, to Micheline Fairbank (mfairbank@water.nv.gov), Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada 89701. **Written submissions must be received by the Division on or before November 3, 2021.** If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division of Water Resources may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be available at the Division of Water Resources offices in Carson City and Las Vegas, as well as on the website at <http://water.nv.gov/> This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This Notice of Workshop 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

LAS VEGAS

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

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

ELKO

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

INTERNET WEBSITES

Nevada Public Notice website:
<http://notice.nv.gov>

Legislative Council Bureau
<http://leg.state.nv.us>

Nevada Division of Water Resources
<http://water.nv.gov>

NEVADA COUNTY PUBLIC LIBRARIES

Carson City Library
900 North Roop Street
Carson City, Nevada 89701-3101

Lincoln County Library
63 Main Street
Pioche, Nevada 89043

Churchill County Library
553 South Main Street
Fallon, Nevada 89406-3306

Lyon County Library System
20 Nevin Way
Yerington, Nevada 89447-2399

Las Vegas-Clark County Library District
Headquarters
833 Las Vegas Boulevard
North Las Vegas, Nevada 89101-2062

Mineral County Public Library
P.O. Box 1390
Hawthorne, Nevada 89415

Douglas County Public Library
1625 Library Lane
Minden, Nevada 89423-0337

Pershing County Library
1125 Central Avenue
Lovelock, Nevada 89419

Elko County Library
720 Court Street
Elko, Nevada 89801-3397

Storey County Public Library (CLOSED,
instead, sent to the Storey County Clerk's
Office, see below)

Esmeralda County Library
Corner of Crook & 4th Street
P.O. Box 430
Goldfield, Nevada 89013-0430

Storey County Treasurer and Clerk's Office
Drawer D
Virginia City, Nevada 89440

Eureka County Library
10190 Monroe Street
Eureka, Nevada 89316

Tonopah Public Library (Nye County)
P.O. Box 449
Tonopah, Nevada 89049

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445-3095

Washoe County Library System
301 South Center Street
Reno, Nevada 89501-2102

Battle Mountain Branch Library (Lander County)
625 South Broad Street
Battle Mountain, Nevada 89820

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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Members of the public who would like additional information about the proposed regulation may contact Micheline Fairbank, via email to mfairbank@water.nv.gov.

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Division in writing, no later than five (5) working days before the hearing, via email to mfairbank@water.nv.gov

PROPOSED REGULATION OF THE STATE ENGINEER

LCB File No. R169-20

November 10, 2021

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.*

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.

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 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 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 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.*

Sec. 9. *For the purposes of NRS 533.380 and 533.395:*

1. “Integrated system” 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” 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. 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;

3. A written summary of the work performed to perfect the appropriation, beginning on the date the permit was issued;

(b) 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;

4. 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;

5. 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;

6. A detailed written explanation of the work expected to be performed if the extension is granted;

(c) Any meaningful action taken by the applicant to perfect the appropriation as described in section 11 of this regulation;

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

(e) 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 evidence of the applicant's steady application of effort and other actions toward perfecting the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances 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) Whether the application is consistent with a water resource plan that complies with 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 a stockwater or a wildlife use:

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

(4) The construction of pipes, float valves, troughs, spring boxes or any similar device

(5) (3) The placement of stock on appurtenant land consistent with requirements in NRS Chapter 533; and

(6) (4) The securing of access to public lands through the appropriate agency.

(7) 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 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;*
- 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. *The Division of Water Resources shall review these regulations not less than every three years and consider whether any of these regulations should be amended or repealed.*

Sec. 14. 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.