

**PROPOSED REGULATION OF THE
STATE ENGINEER**

LCB FILE NO. R142-22I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/29/2022**

PROPOSED REGULATION OF THE STATE

ENGINEER

EXPLANATION – 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 regulation proposed to be retained in this amendment.

AUTHORITY: §§1-38 and 44-49, NRS 532.120; §§39-43, NRS 532.120 and 533.365.

A REGULATION relating to water; reorganizing and revising provisions related to certain hearings and public meetings held by the State Engineer; and providing other matters properly relating thereto.

Section 1. Chapter 532 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 45, inclusive, of this regulation.

Sec. 2. *“Applicant” means a person seeking to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right by filing an appropriate application with the State Engineer.*

Sec. 3. *“Claimant” means a person claiming an appropriative interest in a stream system or underground water involved in the determination of relative rights to the use of the water.*

Sec. 4. *“Hearing” means a proceeding before the State Engineer where parties may present evidence or give sworn testimony.*

Sec. 5. *“Objector” means a claimant who has filed a timely objection with the State Engineer pursuant to NRS 533.145.*

Sec. 6. *“Party” means an applicant, claimant, objector, intervenor, protestant or any other interested person.*

Sec. 7. “Protest hearing” means a hearing before the State Engineer on a protest against an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right.

Sec. 8. “Protestant” means a person filing a protest pursuant to NRS 533.365 with the Office of the State Engineer against an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right, or a successor in interest to a protestant as set forth in NRS 533.370.

Sec. 9. 1. The provisions of this chapter:

(a) Govern the practice and procedure of:

(1) A hearing on a protest against an application to appropriate water or to change the point of diversion, manner of use or place of use of an existing water right pursuant to NRS 533.365;

(2) A hearing on an application for an extension of time to file proof of completion or proof of beneficial use pursuant to NRS 533.380; and

(3) Except as otherwise provided in subsection 2, any other public meeting or public hearing held by the State Engineer pursuant to chapter 532, 533, 534, 535 or 536 of NRS; and

(b) Are intended to be liberally construed to secure the just, speedy and economical determination of all issues presented to the State Engineer.

2. The provisions of this chapter do not apply to any disciplinary hearing related to the professional conduct of a state water right surveyor or a well driller.

3. Where strict compliance is found to be impracticable or unnecessary, and affected

persons are given notice of any procedural changes, the State Engineer may permit deviation from the provisions of this chapter.

Sec. 10. 1. *The State Engineer may hold a public meeting to:*

(a) Allow any person to provide public comment in response to a notice of such a meeting disseminated by the State Engineer.

(b) Develop a record upon which the State Engineer may rely to make a sound decision, without causing unnecessary delay and expense.

2. *A person presenting public comment:*

(a) Will not be sworn in or otherwise asked to affirm the truth of his or her testimony; and

(b) Shall not attempt to move facts into evidence during his or her testimony.

3. *The State Engineer may limit the time allowed for public comment.*

4. *Any documents related to a public meeting may be filed with the Office of the State Engineer at least 2 days before the public meeting to enable distribution to meeting attendees.*

Sec. 11. 1. *Standing to participate in a hearing before the State Engineer is as follows:*

(a) In a hearing to review a cancelled permit, the holder of the permit has standing to participate. Any other person who wishes to intervene in the proceeding must file a petition for intervention pursuant to section 15 of this regulation.

(b) In an enforcement action for an alleged violation of chapter 533, 534, 535 or 536 of NRS, the person who is alleged to have committed the violation has standing to participate. Any other person who wishes to intervene in the proceeding must file a petition for intervention pursuant to section 15 of this regulation.

(c) In a hearing of objections to a preliminary order of determination establishing the

several rights of claimants to the waters of the stream or stream system issued by the State Engineer pursuant to NRS 533.140, objectors and claimants have standing to participate. Except as otherwise provided in NRS 533.130, no other person may intervene in a hearing of objections.

2. This section does not limit the right of any person expressly authorized to participate in an action before the State Engineer pursuant to chapter 533, 534, 535 or 536 of NRS.

Sec. 12. *The State Engineer will consider a request to intervene in a hearing from a person who demonstrates a protectable interest in a water right or the use of water in a stream or underground water based on the following factors:*

1. In favor of allowing intervention:

(a) The extent that the petitioner's participation may reasonably be expected to assist in the development of a complete record;

(b) The extent of the petitioner's property, financial or other interests in the proceeding; and

(c) The possible effect on the petitioner's interests of any decision or order that may be issued by the State Engineer.

2. In favor of not allowing intervention:

(a) The availability of other means whereby the petitioner's interests will be protected;

(b) The extent the petitioner's interests will be represented by existing parties; and

(c) The extent the petitioner's participation will inappropriately broaden the issues or delay the hearing.

Sec. 13. 1. *Any pleading or other document filed in a hearing must be served on each party or his or her attorney or other agent on the date the pleading or document is filed*

with the Office of the State Engineer. Service of the pleading or document:

(a) If the party is represented by an attorney or agent, must be made upon the attorney or agent;

(b) May be made in person, by mail or by electronic mail; and

(c) Shall be deemed to be complete on the date of personal service, mailing or electronic transmission, as applicable.

Sec. 14. 1. *A party requesting an order by the State Engineer concerning a matter subject to a hearing must title the request as a “motion” and:*

(a) If made during a hearing, submit the motion:

(1) In writing; or

(2) Orally, within the time specified by the State Engineer; or

(b) If it is not made during a hearing, submit the motion in writing before the hearing in accordance with subsection 5.

2. Each motion must include a citation to any authority upon which the motion relies.

3. Each written motion must be filed with the Office of the State Engineer and served concurrently upon all parties of record personally or by mail.

4. The State Engineer may direct that any motion made at a hearing must be reduced to writing and filed and served on all parties of record personally or by mail.

5. A written motion, other than one made during a hearing, must be filed with the Office of the State Engineer and served not later than 30 days before the date set for hearing, unless a different time is specified by the State Engineer.

6. Any party against whom a motion is directed may file a response to the motion. The response must be in writing, unless the motion was made orally during the hearing.

7. *A response to a written motion must be filed with the Office of the State Engineer and served concurrently not later than 14 days after the service of the motion.*

8. *The party presenting the motion may file a written reply to the response, which must be filed with the Office of the State Engineer and served concurrently not later than 7 days after the service of the response.*

9. *A motion, response or reply filed pursuant to this section must include a certificate that sets forth proof of service, the method of service and the date of service.*

Sec. 15. *The objective of a hearing is to develop a record upon which the State Engineer may rely to make a sound decision without causing unnecessary delay and expense to participating parties or to the Office of the State Engineer.*

Sec. 16. *The State Engineer may designate a person to preside over a hearing. Any such person may make the final ruling in the matter if authorized to do so in writing by the State Engineer.*

Sec. 17. 1. *Hearings will be held at the time and place designated by the notice of hearing.*

2. *Each party to a hearing, the counsel or other agent of the party and any spectators shall conduct themselves in a respectful manner during the hearing. If a person conducts himself or herself in a disrespectful or inappropriate manner, the State Engineer may expel him or her from the hearing.*

Sec. 18. 1. *Subject to the specific requirements in this section for representation by an attorney, in any hearing before the State Engineer, a party may represent himself or herself or may be represented by an attorney. Any other person who satisfies the State Engineer that the person possesses the expertise and is otherwise competent to advise and*

assist in the presentation of matters before the State Engineer may be allowed to appear on behalf of one or more parties.

2. The provisions of this section rather than the provisions of Supreme Court Rule 42 govern appearances before the State Engineer by an attorney who is not admitted and entitled to practice before the Supreme Court of Nevada.

3. An attorney appearing in any proceeding before the State Engineer must be admitted to practice and in good standing before the highest court of any state or the District of Columbia.

4. With respect to any attorney appearing as a representative in a hearing:

(a) If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada and does not reside in this State, the attorney must associate with an attorney so admitted and entitled to practice and must file a notice of association with the State Engineer pursuant to this section unless, except as otherwise provided in paragraph (b), the attorney filing the notice has appeared at least once before the State Engineer in the 3 years immediately preceding the date of the hearing.

(b) Notwithstanding any previous appearance before the State Engineer by the attorney, the State Engineer may, for good cause shown, require the attorney to associate with an attorney so admitted and entitled to practice and to file a notice of association pursuant to this section.

5. A notice of association required pursuant to this section must:

(a) Identify each jurisdiction in which the attorney who is required to file the notice is admitted and in good standing;

(b) Identify by name and State Bar of Nevada identification number the attorney

with whom the attorney who is required to file the notice is associating;

(c) Describe the qualifications of the attorney who is required to file the notice to advise and assist in the party at the hearing before the State Engineer; and

(d) Be signed by the attorney who is required to file the notice and by the attorney identified in paragraph (b).

6. Except as otherwise provided in subsection 7, the State Engineer may require the attorney who is admitted and entitled to practice before the Supreme Court of Nevada and who is identified in a notice of association pursuant to paragraph (b) of subsection 5 to sign any pleadings and be present at any proceeding on the record.

7. An attorney who resides in this State and who is not admitted and entitled to practice before the Supreme Court of Nevada may not appear in any hearing unless the attorney:

(a) Is qualified or has an application for qualification pending for the limited practice of law pursuant to Supreme Court Rule 49.1; and

(b) Associates with an attorney who is admitted and entitled to practice before the Supreme Court of Nevada and files a notice of association pursuant to this section. The attorney who is admitted and entitled to practice before the Supreme Court of Nevada and who is identified in the notice of association must sign any pleadings and be present at any proceeding on the record.

8. An attorney or other agent representing a party will be recognized as fully controlling the case on behalf of the party.

9. Following the entry of an appearance by an attorney or other agent for a party, all notices, documents and orders thereafter served must be served upon the attorney or

agent. Service on the attorney or agent constitutes, for all purposes, valid service upon the party represented.

Sec. 19. 1. *Issues to be considered during a hearing will be determined from the contents of the documents that initiated the hearing, including, without limitation, an application, a protest or an order issued by the State Engineer.*

2. The State Engineer may define or limit the issues to be considered during a hearing.

Sec. 20. 1. *The State Engineer will ensure that proceedings at a hearing are reported by a certified court reporter.*

2. The original and one copy of the transcript of the proceedings, either in paper or electronic form, must be filed with the State Engineer.

3. The parties shall bear equally the fees of the court reporter for:

(a) The appearance of the court reporter;

(b) The travel expenses of the court reporter; and

(c) Reporting and transcribing the portion of the transcript consisting of comments by the State Engineer and the public.

4. The fees of the court reporter for reporting and transcribing the hearing and any required copies of the transcript must be paid:

(a) For protested applications or a hearing of objections, by the parties pro rata, based on the percentage of the transcript taken by each party's own case; and

(b) For all other matters, equally between the parties.

5. Any person may obtain a copy of a transcript prepared under this section by requesting such a copy from the court reporter.

6. The State Engineer will not accept corrections to a certified transcript filed with

the Office of the State Engineer.

Sec. 21. *Prehearing discovery is not a matter of right, but may be conducted in compliance with a stipulation between the parties or upon order of the State Engineer.*

Sec. 22. 1. *The State Engineer may, upon 15 days' notice to the parties, hold a prehearing conference to:*

- (a) Formulate or simplify the issues involved in the proceeding;*
- (b) Obtain admissions of fact or stipulations of the parties;*
- (c) Determine the nature and extent of the issues to be determined at the hearing or obtain documents necessary to consider those issues at the hearing;*
- (d) Identify the witnesses and the subject matter of their expected testimony and limit the number of witnesses, if necessary;*
- (e) Rule on any motions;*
- (f) Arrange for the exchange of:
 - (1) Proposed exhibits;*
 - (2) Prepared testimony of experts;*
 - (3) Lists of witnesses;*
 - (4) Lists of exhibits; or*
 - (5) Other materials the State Engineer deems to be relevant and necessary to understand the issues;**
- (g) Limit the time and scope of the examination of witnesses;*
- (h) Establish an order of proceedings for the hearing which is most suitable to the particular case, including the order in which parties will present their respective cases;*

and

(i) Discuss and resolve other matters which may promote orderly conduct, expedite the hearing or achieve a settlement of the issues between the parties of record.

2. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the rulings made at the prehearing conference. If the absent party does not provide notice before the prehearing conference that the absent party intends to participate in the hearing, the State Engineer may proceed to consider and dispose of the matter without the participation of the absent party.

3. The rulings, action taken or agreements made at a prehearing conference:

(a) Will be made a part of the record;

(b) Control the course of subsequent proceedings unless modified by the State Engineer; and

(c) Are binding upon all parties.

Sec. 23. 1. At a prehearing conference held pursuant to section 25 of this regulation, or before the date set for the hearing if no prehearing conference is held, each party must identify the persons intending to offer direct testimony at the hearing. If a party fails to identify a witness, the State Engineer may refuse to allow that witness to testify. The State Engineer may require a separate hearing to determine the qualifications of any identified expert who has not previously been qualified by the State Engineer.

2 In determining whether a person is qualified to testify as an expert, the State Engineer will consider whether:

(a) The person is qualified as an expert by special knowledge, skill, experience, training

oreducation.

(b) The person's expert opinion is based on reliable methodology, including, without limitation, whether the expert opinion is:

- (1) Within a recognized field of expertise;*
- (2) Testable and has been tested;*
- (3) Published and subjected to peer review;*
- (4) Generally accepted in the field of expertise; and*
- (5) Based on particularized facts and not assumption, conjecture or generalization.*

3. If the State Engineer determines that testimony offered by an expert witness provides technical or scientific data that is already within the field of expertise of the Office of the State Engineer, the State Engineer will take administrative notice of the testimony.

Sec. 24. 1. *All testimony of witnesses appearing on behalf of a party must be given under oath or affirmation. Public comment is not considered to be testimony.*

2. Unless otherwise ordered by the State Engineer, a witness may give his or her testimony as his or her own narrative or the attorney or agent of the witness may direct his or her testimony.

3. Unless otherwise ordered by the State Engineer, witnesses may testify as a panel when appropriate.

4. All witnesses may be examined by the State Engineer and the staff of the State Engineer.

Sec. 25. 1. *If the parties indicate that many witnesses will appear at the hearing or that a considerable amount of technical testimony will be necessary, the State Engineer may require parties and witnesses to submit their testimony in written form before the hearing date.*

2. If written testimony is submitted, the witness shall also appear at the hearing to:

(a) Affirm that his or her written testimony is true and correct and that he or she personally prepared it or directed its preparation; and

(b) Submit to cross-examination.

3. Written testimony will not be read into the record, but must be entered into evidence as an exhibit. The State Engineer may, however, require a witness who has submitted written testimony to summarize it at the hearing.

Sec. 26. 1. All evidence and testimony offered in a hearing must be relevant to the subject matter of the proceeding.

2. The State Engineer may exclude evidence or testimony that is irrelevant, incompetent or unduly repetitious by:

(a) Requesting a party to cease his or her line of examination or narrative; or

(b) Refusing to consider the evidence or testimony when making his or her final determination.

Sec. 27. If the State Engineer authorizes rebuttal evidence, the party may offer in its rebuttal only evidence that directly explains, counteracts or disproves facts offered into evidence by other parties of record.

Sec. 28. 1. The State Engineer may require in advance of the hearing:

(a) Identification of each exhibit that a party intends to use; and

(b) Exchange of exhibits between certain designated parties.

2. If a party fails to comply with a prehearing order to identify or exchange exhibits, the State Engineer may refuse to accept the exhibit into evidence.

Sec. 29. 1. Exhibits that will be introduced as evidence must be:

(a) In a readily reproducible form; and

(b) On paper that is 8 1/2 by 11 inches or that may be folded to that size, unless otherwise specified by the State Engineer.

2. Larger charts, maps, drawings or other materials will not be introduced into evidence but may be used for demonstrative purposes.

3. Each party must submit to the State Engineer:

(a) An original and one copy of each exhibit that is offered into evidence; and

(b) An electronic copy of each documentary exhibit that is offered into evidence and the exhibit list, which must be saved as a separate file with the name of the party submitting the exhibit, the exhibit number and a short description of the exhibit.

4. If any evidence is included in a written or printed statement, book or other document that contains any other material not relevant and not intended to be admitted into evidence, an excerpt from the statement, book or other document may be submitted. If a party or the State Engineer requests a complete copy of the statement, book or other document, the party submitting the excerpt shall provide the complete copy in a timely manner to the person requesting the copy.

Sec. 30. *The State Engineer may take administrative notice of or accept into evidence by reference to their contents:*

1. Files and records of the Office of the State Engineer;

2. Public records that have been prepared by other governmental agencies;

3. Facts of which judicial notice may be taken by the courts of this State; and

4. Technical or scientific data that:

(a) Have been generally accepted by the relevant scientific community; and

(b) Are within the field of expertise of the Office of the State Engineer.

Sec. 31. 1. *With the approval of the State Engineer, the parties may stipulate to any factin issue, either by a written stipulation introduced into evidence as an exhibit or by an oral statement entered in the record.*

2. Such a stipulation is binding only upon the parties to the stipulation and is not bindingon the State Engineer.

3. The State Engineer may require proof by independent evidence of the stipulated facts.

Sec. 32. 1. *A party may request that the State Engineer continue a hearing to a laterdate by submitting a request for continuance to the State Engineer at least 5 working days before the date set for the hearing.*

2. The State Engineer will notify the other parties of any request for continuance andaccept any responses to the request by the other parties.

3. After considering the request and any responses, the State Engineer may grant or denythe request.

4. The State Engineer may reset a hearing which has previously been continued only if heor she gives at least 15 days' notice to all parties of the new date set for the hearing.

Sec. 33. *If a hearing is held and a party fails to appear at the time and place set for thehearing without prior notification to the State Engineer, the State Engineer will hear the evidence of the witnesses who have appeared and will proceed to consider the matter and dispose of it on the basis of the evidence presented.*

Sec. 34. 1. *The State Engineer may consolidate two or more proceedings into one hearing if it appears that the issues are substantially the same and the interests of the partieswill not be prejudiced by the consolidation.*

2. The State Engineer will determine the order in which the parties introduce

the evidence and the general procedure to be followed during the course of a consolidated hearing.

3. The State Engineer will apportion the costs of a consolidated hearing among the parties responsible for the costs.

Sec. 35. At any time during a hearing, the State Engineer may order the presentation of further evidence on any issue. The State Engineer may authorize any party to file within a fixed time after the hearing additional specific documentary evidence to become part of the record.

Sec. 36. Petitions for reconsideration or rehearing will not be accepted.

Sec. 37. 1. The provisions of sections 39 to 43, inclusive, of this regulation apply to protests against the granting of an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right pursuant to NRS 533.365 and protest hearings.

2. If there is a conflict between sections 15 to 38, inclusive, of this regulation and sections 39 to 43, inclusive, of this regulation, the provisions of sections 39 to 43, inclusive, of this regulation control.

Sec. 38. 1. The form for filing a protest against the granting of the application pursuant to NRS 533.365 are available:

- (a) Upon request and furnished without charge by the State Engineer; and*
- (b) On the Internet website of the Division.*

2. A protestant need not use the filing form furnished by the State Engineer but the filing must be in substantially the same form and contain the same information as that requested in the form provided pursuant to subsection 1.

Sec. 39. 1. *An applicant may, within 45 days after service of a notice of protest, file an answer to a protest filed against his or her application.*

2. A copy of the answer must be served personally or by mail upon the protestant who filed the protest to which the answer responds concurrently with the filing of the answer with the Office of the State Engineer.

Sec. 40. 1. *A protestant may withdraw his or her protest by filing with the Office of the State Engineer a written request for withdrawal of the protest.*

2. The applicant and any protestant may enter into a stipulation regarding the application or related protest. When signed and filed with the Office of the State Engineer, such a stipulation may be treated as a withdrawal of the protest. The filing of such a stipulation does not:

(a) Make the State Engineer a party to the agreement;

(b) Establish a water right not previously acquired pursuant to law; or

(c) Bind the State Engineer or any other protestant not a party to the stipulation.

Sec. 41. *The State Engineer may allow a pleading to be amended or corrected. The State Engineer may disregard any defect or error in a pleading which does not affect any substantial right of a party. A protest may be amended within the statutory period for protests.*

Sec. 42. *The State Engineer has full discretion in each case to determine the order in which the parties introduce their evidence and the general procedure to be followed during the course of each protest hearing. The presentation will ordinarily be in the following order:*

1. The State Engineer will call the proceeding to order and announce the matter to

beheard.

2. The State Engineer will inquire as to whether the parties are represented by counsel or other agent.

3. The State Engineer will offer the exhibits of the State Engineer into evidence. Any party may then object to that evidence.

4. The State Engineer may offer the parties the opportunity to make opening statements which briefly summarize what their proposed testimony and exhibits are intended to establish. Opening statements must not contain evidence.

5. The parties shall present their cases in chief in the order established by the State Engineer, including:

(a) Testimony, either by the narrative of each party or the witness of each party or by direct examination conducted by each party's attorney or agent;

(b) Cross-examination;

(c) Redirect examination; and

(d) Recross-examination.

↪ The same order of examination will be followed for each witness.

6. The State Engineer or his or her staff may question any witnesses during their testimony.

7. After all testimony and comments have been received on behalf of the parties, the State Engineer will admit into evidence, subject to objection and ruling, any remaining exhibits that have not already been admitted during the course of the hearing. The State Engineer may rule on the admissibility of a challenged exhibit after hearing arguments or may take the objections under submission and announce the ruling on admissibility as part of the final decision.

8. *The State Engineer may allow closing statements that briefly summarize the points respectively made during the hearing.*

9. *Public comment will be taken at the end of each hearing. If warranted, the State Engineer may vary the time for taking public comment or require that public comment be submitted in writing. The State Engineer may limit the time each person is allowed to comment.*

10. *The State Engineer may require the submission of legal briefs. If the State Engineer orders the filing of briefs, he or she will indicate which subjects must be addressed in the briefs and the schedule for their submission. Briefs ordered under this subsection must be filed with the Office of the State Engineer and must be accompanied by an acknowledgment or an affidavit showing service on the other parties.*

11. *Unless the State Engineer orders otherwise, the State Engineer will close the record of the hearing, take the matter under submission and issue his or her ruling on the matter.*

Sec. 43. 1. *The provisions of this section apply to a hearing of objections to a preliminary order of determination held pursuant to NRS 533.150. If there is a conflict between sections 15 to 38, inclusive, of this regulation and this section, the provisions of this section control.*

2. *A hearing of objections held by the State Engineer:*

(a) *Must be held in accordance with NRS 533.150, 533.155 and 533.160.*

(b) *Is intended to allow the objector to present evidence to the State Engineer in support of the objection to the preliminary order of determination. Any person who is not a claimant in the proceedings may make public comment to express general support or opposition to a particular objection.*

3. The State Engineer may allow the questioning of witnesses in order to clarify testimony.

Sec. 44. 1. *If a person desires to petition the State Engineer to adopt, amend or repeal a regulation regarding the practice and procedure of hearings, he or she must submit such a*

petition in writing and include a statement of the petitioner's interest, the nature of the request, the reasons for the request, relevant data, argument for the request and such other matters as the petitioner believes may be helpful to the State Engineer in determining the proper action to take in the matter. The petition must be signed by or on behalf of the petitioner and filed in the Office of the State Engineer.

2. If a petition requests the adoption of a proposed regulation, it must also include the full text of the proposed regulation.

3. If a petition requests the amendment or repeal of an existing regulation, it must also include a copy of the regulation or that portion of the regulation in question and the suggested amendment.

Sec. 45. NAC 532.010 is hereby amended to read as follows:

532.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 532.020 to 532.160, inclusive, *and sections 2 to 11, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 46. NAC 532.120 is hereby amended to read as follows:

532.120 ~~["Requirement" means:]~~

1. *Except as otherwise provided in subsection 2, "requirement" means:*

(a) Any provision of chapter 533, 534, 535 or 536 of NRS;

~~12.1~~ (b) Any provision of a permit, certificate, order or decision issued or regulation adopted

by the State Engineer; or

~~13.1~~ (c) Any provision for the development and use of water from a well for domestic purposes pursuant to NRS 534.013 and 534.180.

2. The term “requirement” does not include any provision of title 48 of NRS or any regulation adopted pursuant thereto relating to the professional conduct of a state water rightsurveyor or a well driller.

Sec. 47. NAC 532.140 is hereby amended to read as follows:

532.140 “State Engineer” ~~has the meaning ascribed to it in NRS 533.015.~~ *means:*

- 1. The State Engineer;*
- 2. Any duly authorized assistant of the State Engineer; or*
- 3. A person designated by the State Engineer to preside over a hearing.*

Sec. 48. NAC 532.080, 532.090, 532.230, 532.240, 532.250, 533.010, 533.020, 533.030, 533.050, 533.060, 533.070, 533.080, 533.090, 533.110, 533.120, 533.130, 533.140, 533.141, 533.142, 533.143, 533.144, 533.150, 533.160, 533.170, 533.180, 533.190, 533.200, 533.210, 533.220, 533.230, 533.240, 533.250, 533.260, 533.265, 533.280, 533.290, 533.300, 533.310, 533.320, 533.330, 533.340, 533.350, 533.360, 533.365, 533.370 and 533.380 are hereby repealed.

TEXT OF REPEALED SECTIONS

532.080 “Hearing to show cause” defined. (NRS 532.120) “Hearing to show cause” means a hearing between a respondent and the Division to determine the manner in which the respondent acted upon a finding of alleged violation or a violation order issued by the Division to the respondent.

532.090 “Independent advisory committee” defined. (NRS 532.120)

“Independent advisory committee” means a committee that:

1. Consists entirely of members appointed by the Director of the State Department of Conservation and Natural Resources who have knowledge of and experience in the laws and regulations of this State relating to water; and
2. Is formed to review an appeal of a penalty assessed for a violation.

532.230 Hearings to show cause: Appearance of parties; procedure. (NRS 532.120, 533.481, 534.193, 535.200, 536.200)

1. The parties may appear in person at a hearing to show cause and may be represented by counsel. All testimony must be given under oath and recorded.
2. The Division:
 - (a) Shall determine the order of the presentation of evidence; and
 - (b) May limit the time and scope of the examination of witnesses and disallow repetitive testimony.

532.240 Hearings to show cause: Conduct of persons; maintenance of order. (NRS 532.120, 533.481, 534.193, 535.200, 536.200)

1. A person who appears at a hearing to show cause shall conform to the recognized standards of ethical and courteous conduct as determined by the Division. All parties to the hearing, their counsel and the spectators shall conduct themselves in a

respectful manner.

2. The Division may take any action which it determines is necessary to maintain order during a hearing to show cause, including, without limitation:

- (a) Excluding a party or his or her attorney or authorized representative from the hearing;
- (b) Excluding a witness from the hearing; and
- (c) Limiting the taking of testimony and presentation of evidence during the hearing.

532.250 Hearing before independent advisory committee: Request; extension of time; notice; final decision. (NRS 532.120, 533.481, 534.193, 535.200, 536.200)

1. A respondent may request, in writing, a hearing before an independent advisory committee within 30 days after the date the State Engineer imposes a penalty against the respondent.

2. The independent advisory committee shall schedule a hearing within 30 days after receiving the request, unless the Division extends the time for good cause.

3. The State Engineer, in conjunction with the independent advisory committee, will determine the time, date and location of the hearing and notify the respondent of that fact.

4. The State Engineer will issue a final decision concerning the appeal within 30 days after the hearing.

533.010 Scope; construction; deviation from requirements. (NRS 532.120, 533.365)

1. The provisions of this chapter:

- (a) Govern the practice and procedure of hearings before the State Engineer on protests against applications to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right under NRS 533.365.

- (b) Are intended to be liberally construed to secure the just, speedy and

economical determination of all issues presented to the State Engineer.

2. Where strict compliance is found to be impracticable or unnecessary, and affected persons are given notice of any procedural changes, the State Engineer may permit deviation from the provisions of this chapter.

533.020 Definitions. As used in this chapter, 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.

533.030 “Applicant” defined. “Applicant” means a person seeking to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right by filing an appropriate application with the State Engineer.

533.050 “Party” defined. “Party” means an applicant or protestant.

533.060 “Person presenting public comment” defined. (NRS 532.120, 533.365)
“Person presenting public comment” means a person attending the hearing and expressing:

1. General support or opposition regarding a particular project proposal, application, protest to an application or comment on the facts already in evidence or on any related public policy; or

2. An opinion regarding the adequacy of environmental documents relating to the hydrologic effects of a project presented for consideration to the State Engineer.

533.070 “Protest hearing” defined. “Protest hearing” means a hearing before the State Engineer on a protest against an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right.

533.080 “Protestant” defined. (NRS 532.120, 533.365, 533.370) “Protestant” means a person filing a protest pursuant to NRS 533.365 with the Office of the State Engineer

against an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right, or a successor in interest to a protestant as set forth in NRS 533.370.

533.090 “State Engineer” defined. “State Engineer” has the meaning ascribed to it in NRS 533.015 and, for the purposes of this chapter, includes a person designated by the State Engineer to preside over a protest hearing.

533.110 Public comment. (NRS 532.120, 533.365)

1. A person presenting public comment:
 - (a) Will not be sworn in or otherwise asked to affirm the truth of his or her testimony; and
 - (b) Shall not attempt to move facts into evidence during his or her testimony.
2. The State Engineer may limit the time allowed for public comment.

533.120 Authority of person designated to preside over hearing to make final ruling. (NRS 532.120, 533.365) If the State Engineer designates a person to preside over a protest hearing, the person may, if authorized in writing by the State Engineer, make the final ruling in the matter.

533.130 Pleadings: Forms for filing protest.

1. The forms for filing a protest are available upon request and furnished without charge by the State Engineer.
2. A protestant need not use the filing form furnished by the State Engineer but the filing must be in substantially the same form and contain the same information as that requested in the form furnished by the State Engineer.

533.140 Pleadings: Answers. (NRS 532.120, 533.365)

1. An applicant may, within 45 days after service of a notice of protest, file an answer

to a protest filed against his or her application.

2. A copy of the answer must be served personally or by mail upon the protestant who filed the protest to which the answer responds concurrently with the filing of the answer with the Office of the State Engineer.

533.141 Pleadings: Amendment or correction. (NRS 532.120, 533.365) The State Engineer may allow a pleading to be amended or corrected. The State Engineer may disregard any defect or error in a pleading which does not affect any substantial right of a party. A protest may be amended within the statutory period for protests.

533.142 Motions: Procedure; contents; responses; replies. (NRS 532.120, 533.365)

1. A party requesting an order by the State Engineer concerning a matter subject to a protest hearing must title the request as a “motion” and:

(a) If made during a hearing, submit the motion:

(1) In writing; or

(2) Orally, within the time specified by the State Engineer; or

(b) If it is not made during a hearing, submit the motion in writing before the hearing in accordance with subsection 5.

2. Each motion must include a citation to any authority upon which the motion relies.

3. Each written motion must be filed with the Office of the State Engineer and served concurrently upon all parties of record personally or by mail.

4. The State Engineer may direct that any motion made at a hearing must be reduced to writing and filed and served in accordance with this section and NAC 533.143.

5. A written motion, other than one made during a hearing, must be filed with the Office

of the State Engineer and served not later than 30 days before the date set for hearing, unless a different time is specified by the State Engineer.

6. Any party against whom a motion is directed may file a response to the motion. The response must be in writing, unless the motion was made orally during the hearing.

7. A response to a written motion must be filed with the Office of the State Engineer and served concurrently not later than 10 days after the service of the motion.

8. The party presenting the motion may file a written reply to the response, which must be filed with the Office of the State Engineer and served concurrently not later than 10 days after the service of the response.

9. Two copies of any motion, response or reply must be timely filed with the Office of the State Engineer.

10. A motion, response or reply filed pursuant to this section must include a certificate that sets forth proof of service, the method of service and the date of service.

533.143 Pleadings or other documents: Service; computation of time for filing or serving. (NRS 532.120, 533.365)

1. Any pleading or other document filed in a protest hearing must be served on each party or his or her attorney or other agent on the date the pleading or document is filed with the Office of the State Engineer. Service of the pleading or document:

- (a) Shall be deemed complete on the date of mailing or personal service.
- (b) Upon the attorney or agent shall be deemed service upon the party.

2. In computing any period prescribed for filing or serving a motion, response or reply pursuant to this chapter, the first day on which any act occurs that causes the period to run is not counted and the last day of the period is counted. If the last day is a Saturday, Sunday or

legal holiday, the motion, response or reply may be filed or served on the next day which is not a Saturday, Sunday or legal holiday.

533.144 Pleadings or other documents: Date on which considered filed; unacceptable methods of filing. (NRS 532.120, 533.365) Any pleading or other document filed with the Office of the State Engineer will be considered filed on the date the signed original of the pleading or document is actually received in the Office of the State Engineer. The State Engineer will not accept filings of such pleadings or documents that are submitted electronically or by facsimile machine.

533.150 Withdrawal of protest: Procedure; stipulation regarding application or related protest. (NRS 532.120, 533.365)

1. A protestant may withdraw his or her protest by filing with the Office of the State Engineer a written request for withdrawal of the protest.
2. The applicant and any protestant may enter into a stipulation regarding the application or related protest. When signed and filed with the Office of the State Engineer, such a stipulation may be treated as a withdrawal of the protest. The filing of such a stipulation does not:
 - (a) Make the State Engineer a party to the agreement;
 - (b) Establish a water right not previously acquired pursuant to law; or
 - (c) Bind the State Engineer or any other protestant not a party to the stipulation.

533.160 Prehearing discovery. (NRS 532.120, 533.365) Prehearing discovery is not a matter of right, but may be conducted in compliance with a stipulation between the parties or upon order of the State Engineer.

533.170 Prehearing conferences. (NRS 532.120, 533.365)

1. The State Engineer may, upon 15 days' notice to the parties, hold a prehearing conference

to:

- (a) Formulate or simplify the issues involved in the proceeding;
- (b) Obtain admissions of fact or stipulations of the parties;
- (c) Determine the nature and extent of the issues to be determined at the hearing or obtain documents necessary to consider those issues at the hearing;
- (d) Identify the witnesses and the subject matter of their expected testimony and limit the number of witnesses, if necessary;
- (e) Rule on any motions;
- (f) Arrange for the exchange of:
 - (1) Proposed exhibits;
 - (2) Prepared testimony of experts;
 - (3) Lists of witnesses;
 - (4) Lists of exhibits; or
 - (5) Other materials the State Engineer deems to be relevant and necessary to understand the issues;
- (g) Limit the time and scope of the examination of witnesses;
- (h) Establish an order of proceedings for the hearing which is most suitable to the particular case, including the order in which parties will present their respective cases; and
- (i) Discuss and resolve other matters which may promote orderly conduct, expedite the hearings or achieve a settlement of the issues between the parties of record.

2. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the rulings made at the

prehearing conference. If the absent party does not provide notice before the prehearing conference that the absent party intends to participate in the hearing, the State Engineer may proceed to consider and dispose of the matter without the participation of the absent party.

3. The rulings, action taken or agreements made at a prehearing conference:
 - (a) Will be made a part of the record;
 - (b) Control the course of subsequent proceedings unless modified by the State Engineer;
and
 - (c) Are binding upon all parties.

533.180 Hearings: Objective. (NRS 532.120, 533.365) The objective of a protest hearing is to develop a record upon which the State Engineer may rely to make a sound decision, without causing unnecessary delay and expense to participating parties or to the Office of the State Engineer.

533.190 Hearings: Location; conduct of persons. (NRS 532.120, 533.365)

1. Protest hearings will be held at the time and place designated by the notice of hearing.
2. Each party to a protest hearing, the counsel or other agent of the party and any spectator shall conduct themselves in a respectful manner during the hearing. If a person conducts himself or herself in a disrespectful or inappropriate manner, the State Engineer may expel him or her from the hearing.

533.200 Hearings: Right to representation by attorney; role of attorney.

1. A party in a protest hearing may be represented by an attorney or other agent.
2. An attorney representing a party in a protest hearing must be an active member of the State Bar of Nevada or associated with an active member of the State Bar of Nevada.
3. An attorney or other agent representing a party will be recognized as fully controlling the case on behalf of the party.

4. Following the entry of an appearance by an attorney or other agent for a party, all notices, documents and orders thereafter served must be served upon the attorney or agent. Service on the attorney or agent constitutes, for all purposes, valid service upon the party represented.

533.210 Hearings: Permissible issues. (NRS 532.120, 533.365)

1. Issues to be considered during a hearing will be determined from the contents of the application and any protests or as modified by the State Engineer.

2. The State Engineer may define or limit the issues to be considered.

533.220 Hearings: Reporting by court reporter; availability and costs of transcripts.

1. The State Engineer will ensure that proceedings at hearings are reported by a certified court reporter.

2. The original and one copy of the transcript of the proceedings must be filed with the State Engineer.

3. The applicant and the protestant shall bear equally the fees of the court reporter for:

(a) The appearance of the court reporter;

(b) The travel expenses of the court reporter; and

(c) Reporting and transcribing the portion of the transcript consisting of comments by the State Engineer and the public.

4. The applicant and the protestant shall bear pro rata, based on the percentage of the transcript taken up by their own case, the fees of the court reporter for reporting and transcribing the portion of the transcript taken up by the applicant's and the protestant's case.

5. Any person may obtain a copy of a transcript prepared under this section by requesting such a copy from the Office of the State Engineer or the court reporter and upon

payment of the actual cost of obtaining the copy from the court reporter.

533.230 Hearings: Identification of witnesses. (NRS 532.120, 533.365) Before the hearing, the State Engineer may require the parties to identify the persons intending to offer direct testimony at the hearing. If a party fails to comply with a prehearing order to identify a witness, the State Engineer may refuse to allow that witness to testify.

533.240 Hearings: Testimony under oath or affirmation; panels; examination and cross-examination of witnesses. (NRS 532.120, 533.365)

1. All testimony of witnesses appearing on behalf of a party must be given under oath or affirmation. For the purposes of this section, public commentary is not considered to be testimony.

2. Unless otherwise ordered by the State Engineer, a witness may give his or her testimony as his or her own narrative or the attorney or agent of the witness may direct his or her testimony.

3. Unless otherwise ordered by the State Engineer, witnesses may testify as a panel when appropriate.

4. The applicant may cross-examine a protestant's witness and a protestant may cross-examine the applicant's witness. A protestant may not cross-examine another protestant's witness.

5. All witnesses may be examined by the State Engineer and the staff of the State Engineer.

533.250 Hearings: Written testimony. (NRS 532.120, 533.365)

1. When the particular facts of an application and protest indicate that many witnesses will appear at the hearing or that a considerable amount of technical testimony will be necessary, the State Engineer may require parties and witnesses to submit their testimony in

written form before the hearing date.

2. If written testimony is submitted, the witness shall also appear at the hearing to:

(a) Affirm that his or her written testimony is true and correct and that he or she personally prepared it or directed its preparation; and

(b) Submit to cross-examination.

3. Written testimony will not be read into the record, but must be entered into evidence as an exhibit. The State Engineer may, however, require a witness who has submitted written testimony to summarize it at the hearing.

533.260 Hearings: Admission of evidence. (NRS 532.120, 533.365)

1. All evidence offered in a hearing, including the testimony of a witness, must be relevant to the subject matter of the proceeding.

2. The State Engineer may exclude testimony that is irrelevant, incompetent or unduly repetitious by:

(a) Requesting a party to cease his or her line of examination or narrative; or

(b) Refusing to consider the testimony when making his or her final determination.

533.265 Hearings: Rebuttal evidence. (NRS 532.120, 533.365) If the State Engineer authorizes rebuttal evidence, the party may offer in its rebuttal only evidence that directly explains, counteracts or disproves facts offered into evidence by other parties of record.

533.280 Hearings: Identification and exchange of exhibits. (NRS 532.120, 533.365)

1. The State Engineer may require in advance of the hearing:

(a) Identification of each exhibit that a party intends to use; and

(b) Exchange of exhibits between certain designated parties.

2. If a party fails to comply with a prehearing order to identify or exchange exhibits, the State Engineer may refuse to accept the exhibit into evidence.

533.290 Hearings: Admissibility and form of exhibits. (NRS 532.120, 533.365)

1. Exhibits that will be introduced as evidence must be:
 - (a) In a readily reproducible form; and
 - (b) On paper that is 8 1/2 by 11 inches or that may be folded to that size, unless otherwise specified by the State Engineer.
2. Larger charts, maps, drawings or other materials will not be introduced into evidence but may be used for demonstrative purposes.
3. An original and one copy of each exhibit that is offered into evidence must be submitted to the State Engineer.
4. If any evidence is included in a written or printed statement, book or other document that contains any other material not relevant and not intended to be admitted into evidence, an excerpt from the statement, book or other document may be submitted. If a party or the State Engineer requests a complete copy of the statement, book or other document, the party submitting the excerpt shall provide the complete copy in a timely manner to the person requesting the copy.

533.300 Hearings: Administrative notice. (NRS 532.120, 533.365) The State Engineer may take administrative notice of or accept into evidence by reference to their contents:

1. Files and records of the Office of the State Engineer;
2. Public records that have been prepared by other governmental agencies;
3. Facts of which judicial notice may be taken by the courts of this state; and
4. Technical or scientific data that:

- (a) Have been generally accepted by the relevant scientific community; and
- (b) Are within the field of expertise of the Office of the State Engineer.

533.310 Hearings: Stipulations.

1. With the approval of the State Engineer, the parties may stipulate to any fact in issue, either by a written stipulation introduced into evidence as an exhibit or by an oral statement entered in the record.
2. Such a stipulation is binding only upon the parties to the stipulation and is not binding on the State Engineer.
3. The State Engineer may require proof by independent evidence of the stipulated facts.

533.320 Hearings: Continuances.

1. A party may request that the State Engineer continue a protest hearing to a later date by submitting a request for continuance to the State Engineer at least 5 working days before the date set for the hearing.
2. The State Engineer will notify the other parties of any request for continuance and accept any responses to the request by the other parties.
3. After considering the request and any responses, the State Engineer may grant or deny the request.
4. The State Engineer may reset a hearing which has previously been continued only if he or she gives at least 15 days' notice to all parties.

533.330 Hearings: Failure to appear. (NRS 532.120, 533.365) If a hearing is held and a party fails to appear at the time and place set for the hearing without prior notification to the State Engineer, the State Engineer will hear the evidence of the witnesses who have appeared and will proceed to consider the matter and dispose of it on the basis of the evidence

presented.

533.340 Hearings: Consolidation.

1. The State Engineer may consolidate two or more proceedings if it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by the consolidation.

2. The State Engineer will determine the order in which the parties introduce their evidence and the general procedure to be followed during the course of a consolidated hearing.

3. The State Engineer will apportion the costs of a consolidated hearing among the parties responsible for the costs.

533.350 Hearings: Order of proceedings. (NRS 532.120, 533.365) The State Engineer has full discretion in each case to determine the order in which the parties introduce their evidence and the general procedure to be followed during the course of each protest hearing. The presentation will ordinarily be in the following order:

1. The State Engineer will call the proceeding to order and announce the matter to be heard.
2. The State Engineer will inquire as to whether the parties are represented by counsel or other agent.
3. The State Engineer will offer the exhibits of the State Engineer into evidence. Any party may then object to that evidence.
4. The State Engineer may offer the parties the opportunity to make opening statements which briefly summarize what their proposed testimony and exhibits are intended to establish. Opening statements must not contain evidence.
5. The parties shall present their cases in chief in the order established by the

State Engineer, including:

(a) Testimony, either by the narrative of each party or the witness of each party or by direct examination conducted by each party's attorney or agent;

(b) Cross-examination;

(c) Redirect examination; and

(d) Recross-examination.

↳ The same order of examination will be followed for each witness.

6. The State Engineer or his or her staff may question any witnesses during their testimony.

7. After all testimony and comments have been received on behalf of the applicant and protestant, the State Engineer will admit into evidence, subject to objection and ruling, any remaining exhibits that have not already been admitted during the course of the hearing. The State Engineer may rule on the admissibility of a challenged exhibit after hearing arguments or may take the objections under submission and announce the ruling on admissibility as part of the final decision.

8. The State Engineer may allow closing statements that briefly summarize the points respectively made during the hearing.

9. Public comment will be taken at the end of each hearing. If warranted, the State Engineer may vary the time for taking public comment or require that public comment be submitted in writing. The State Engineer may limit the time each person is allowed to comment.

10. The State Engineer may require the submission of legal briefs. If the State Engineer orders the filing of briefs, he or she will indicate which subjects must be addressed in the briefs and the schedule for their submission. Briefs ordered under this subsection must be

filed with the Office of the State Engineer and must be accompanied by an acknowledgment or an affidavit showing service on the other party.

11. Unless the State Engineer orders otherwise, the State Engineer will close the record of the hearing, take the matter under submission and rule as provided in chapters 533 and 534 of NRS.

533.360 Hearings: Additional evidence. At any time during the protest hearing, the State Engineer may order the presentation of further evidence on any issue. The State Engineer may authorize any party to file within a fixed time after the hearing additional specific documentary evidence to become part of the record.

533.365 Hearings: Petitions for reconsideration or rehearing not accepted.
(NRS 532.120, 533.365) Petitions for reconsideration or rehearing will not be accepted.

533.370 Hearings: Interim order. At any time during the protest hearing process, the State Engineer may issue an appropriate interim order.

533.380 Petition to adopt, amend or repeal regulation on practice and procedure of protest hearing.

1. If a person desires to petition the State Engineer, pursuant to NRS 233B.100, to adopt, amend or repeal a regulation regarding the practice and procedure of protest hearings, he or she must submit such a petition in writing and include a statement of the petitioner's interest, the nature of the request, the reasons for the request, relevant data, argument for the request and such other matters as the petitioner believes may be helpful to the State Engineer in determining the proper action to take in the matter. The petition must be signed by or on behalf of the petitioner and filed in the Office of the State Engineer.

2. If a petition requests the adoption of a proposed regulation, it must also include the fulltext of the proposed regulation.

3. If a petition requests the amendment or repeal of an existing regulation, it must also include a copy of the regulation or that portion of the regulation in question and the suggested amendment.