

# PROPOSED ADMINISTRATIVE REGULATIONS

## Nevada Administrative Code Chapter 533

### *Administrative Regulations Governing: Hearings before the State Engineer; Applications for Extensions of Time to Perfect a Water Right; Licensing of Nevada Water Right Surveyors*

#### GENERAL PROVISIONS

**Section 1.** NAC 533.010 Scope; construction; deviation from requirements

1. The provisions of this chapter:

(a) Govern the practice and procedure of hearings before the State Engineer ~~for~~, *including* protests against applications to appropriate water or to change the ~~for~~ *place* point of diversion, manner of use or place of use of an existing water right under *NRS 533.365; objections to a preliminary order of determination under NRS 533.150; hearings on extensions of time to perfect an appropriation; and all other matters to which the public has been invited to participate.*

(b) *Provide a comprehensive regulation of the requirements for an application for extension of time to file proof of completion of work or proof of beneficial use as required by NRS 533.380(3), 533.390 and 533.410, and to establish criteria for review by the State Engineer.*

(c) 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.

**Sec. 2 Definitions.** As used in this chapter, unless the context otherwise requires, the words and terms defined in *NAC 533.030 and Sections 3 through 24* inclusive, have the meanings ascribed to them in those sections.

**Sec. 3 “Beneficial use” defined.** *“Beneficial use” the amount of water necessary when good faith and reasonable diligence are used for the stated purpose of the appropriation, including a use of water that results in an appreciable gain or value to the user and to the public, and such benefits may include economic (e.g., agriculture, mining, industrial, commercial, or energy production), social (e.g., recreation, greenbelt irrigation, or public park maintenance), societal (e.g., domestic, municipal, quasi-municipal), or environmental (e.g., wildlife habitat, water quality, or mine reclamation).*

**Sec. 4 “Claimant” defined.** *“Claimant” means a person claiming any interest in the stream system or underground water involved in the determination of relative rights to the use of water. Only a claimant may file an objection.*

**Sec. 5 “Integrated System” defined.** *An “integrated system” means a complex or unitary whole consisting of separate, interrelated elements (e.g., a ranch with multiple fields).*

**Sec. 6 “Interested Party” defined.** *A person who has either a protectable interest in a water right or use of water on a stream system or underground water, or can make a demonstration of representing a protectable interest in the stream system or underground water.*

**Sec. 7 “Objector” defined.** *“Objector” means a claimant that has filed a verified objection with the State Engineer pursuant to NRS 533.145.*

**Sec. 8 NAC 533.050 “Party” defined.** *“Party” means an applicant, ~~or~~ protestant, *claimant, objector, or interested party*.*

**Sec. 9 “Perfect an appropriation” defined.** *To “perfect an appropriation” means to carry out all requirements of a water right permit for placing the water to beneficial use to completion, i.e., the construction of diversion works, installation of measuring devices, filing statement of work actually constructed, placing water to beneficial use, and submission and acceptance of a verified statement of proof of beneficial use, all in accordance with the terms and conditions of the water right permit. The result of perfecting an appropriation is the issuance of a certificate of appropriation.*

**Sec. 10 “Perfected water right” defined.** *For an appropriative right, a “perfected water right” is a water right that has had a certificate of appropriation issued. In the context of an appropriative right, a certificated water right is synonymous with a perfected water right.*

**Sec. 11 NAC 533.060 “Person presenting public comment” defined.** ([NRS 532.120](#), [533.365](#)) *“Person presenting public comment” means a person **who is not otherwise a party to the hearing or public meeting**, attending the hearing **or public meeting**, 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.

**Sec. 12. “Project” defined.** *A “project” means a planned enterprise or undertaking prosecuted individually or collaboratively to achieve a specific goal (e.g., a subdivision with multiple phases).*

**Sec. 13 “Professional engineer” defined.** *“Professional engineer” has the meaning ascribed to it in NRS 625.060.*

**Sec. 14 “Professional land surveyor” defined.** *“Professional land surveyor” has the meaning ascribed to it in NRS 625.070.*

**Sec. 15 “Proof of appropriation” defined.** *“Proof of appropriation” has the meaning ascribed to it in NRS 533.115.*

**Sec. 16 “Proof of beneficial use” defined.** *“Proof of beneficial use” has the meaning ascribed to it in NRS 533.400.*

**Sec. 17 “Proof of completion” defined. “Proof of completion” has the meaning ascribed to it in NRS 533.390.**

**Sec. 18 NAC 533.080 “Protestant” defined.** ([NRS 532.120](#), [533.365](#), [533.370](#)) “Protestant” means a person filing a protest pursuant to [NRS 533.365 or pursuant to section 46](#) with the **Division of Water Resources** ~~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. 19 “Reasonable diligence” defined. Reasonable diligence has the meaning ascribed to it in NRS 533.380(6).**

**Sec. 20 “Significant action” defined. A “significant action” taken to perfect a water right by its manner of use includes, without limitation, the following:**

1. **All manners of use**
  - a. *Drilling and equipping a well at the point of diversion.*
  - b. *Properly installing a meter at the discharge of the well.*
  - c. *Installing pipes or ditches to convey water to the place of use.*
  - d. *Installing a headgate, weir, dam, or other diversion structures at the point of diversion.*
  - e. *Improving a spring.*
  - f. *Placing a portion of the water to beneficial use in accordance with the terms of the permit.*
  - g. *Taking action to complete permitting or licensing by other agencies.*
  - h. *Any other action considered by the State Engineer to constitute significant progress in the perfection of the water right.*
2. **Commercial**
  - a. *Constructing the infrastructure and facilities.*
3. **Construction**
  - a. *Number of trucks filled from a standpipe for dust control or compaction.*
  - b. *Description and progress of all projects where the water is utilized.*
4. **Domestic**
  - a. *Construction of single-family residence or accessory dwelling.*
5. **Industrial; Power; and Mining, Milling, and Dewatering**
  - a. *Construction of facilities, including foundations, buildings, power plants, processing plants, piping and instrumentation, etc.*
6. **Irrigation**
  - a. *Installing sprinklers, wheel lines, pivots, or other irrigation systems.*
  - b. *Constructing ditches, berms, check dams, and other structures to deliver and control water on the field within the place of use.*
7. **Supplemental Irrigation**
  - a. *Irrigation performed under the primary right.*

8. *Municipal and Quasi-municipal*
  - a. *Number of completed units in the subdivision or water system.*
  - b. *Dedication to a subdivision, parcel, or tract and recordation of associated map within the place of use.*
9. *Recreational*
  - a. *Constructing necessary infrastructure for the recreational purpose.*
10. *Stockwater and Wildlife*
  - a. *Construction of wind turbines, solar panels, diesel engines, or other power sources.*
  - b. *Construction of pipes, float valves, troughs, etc.*
  - c. *Securing access to public lands through the appropriate jurisdictional agency.*

Sec. 21 *“Steady application of effort” defined.* A “steady application of effort” means affirmative actions taken by the permittee demonstrated through submitting proof and evidence of significant actions being taken since approval of the permit and, as applicable, since approval of prior applications for extension of time.

Sec. 22 *“Supplemental irrigation” defined.* “Supplemental irrigation” means the use of an appropriation of water to supplement the duty of water assigned to the permitted place of use during periods where the primary source of water is unavailable to meet the full duty of water assigned to irrigate the permitted place of use under both appropriations.

Sec. 23 *“Water right application” defined.* “Water right application” means any application for permit to appropriate the public waters of the State of Nevada, including secondary and environmental purposes and any application for permission to change point of diversion, manner of use and place of use of the public waters of the state of Nevada heretofore appropriated, whether temporary or permanent.

Sec. 24 *Other definitions.* All other words used herein shall be given their usual, customary, and accepted meaning. Terms defined in the statutes or regulations of the State Engineer shall use the meaning given therein. All words of a technical nature specific to the state water right surveyor industry shall be given the meaning generally accepted in said industry.

## PRACTICE AND PROCEDURES IN PROTEST HEARINGS BEFORE STATE ENGINEER

### *Rules of General Applicability for Parties and Commenters*

Sec. 25 ~~NAC 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.]~~

Sec. 26 *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.*

**Sec. 27—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.]~~

**Sec. 28—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.]~~

**Sec. 29 *Discretionary Intervention.* The State Engineer may consider a request for discretionary intervention when at least one Interested Party has established standing. An Interested Party seeking discretionary intervention must include in their petition:**

- (a) *The extent to which the Party's participation may reasonably be expected to assist in developing a sound record;*
- (b) *The nature and extent of the Party's property, financial or other interests in the proceeding; and*
- (c) *The possible effect of any decision or order that may be issued in the proceeding on the Party's interest;*

→***Factors the State Engineer may consider against allowing intervention:***

- (a) *The availability of other means whereby the Party's interest will be protected;*
- (b) *The extent to which the Party's interest will be represented by existing parties; and*
- (c) *The extent to which the Party's participation will inappropriately broaden the issues or delay the proceeding.*

**Sec. 30 NAC 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 **Division of Water Resources** ~~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 **Division of Water Resources** ~~Office of the State Engineer~~ and served not later than ~~10~~ 21 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 **Division of Water Resources** ~~Office of the State Engineer~~ and served concurrently not later than ~~10~~ 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 **Division of Water Resources** ~~Office of the State Engineer~~ and served concurrently not later than ~~10~~ 7 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.

**Sec. 31 ~~NAC 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.]~~

**Sec. 32 NAC 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 **Division of Water Resources** ~~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 **Division of Water Resources** ~~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.

**Sec. 33 ~~NAC 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.]

### *Motion Practice: Service of Documents*

#### **Sec. 24 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 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 Division of Water Resources. Service of the pleading or document must be made in one of the following ways:

- (a) *In person.*
- (b) *By mail. If service is by mail, the service is complete when a true copy of the document, properly addressed and stamped, is deposited in the United States mail.*
- (c) *By electronic mail. If service is by electronic mail, the service is complete when sent, except service is deemed to have occurred on the next day if the electronic mail message is sent after 5 p.m. on a business day, on a Saturday, on a Sunday or on a holiday on which the State Engineer's offices are closed.*

2. *After the commencement of a proceeding, a copy of each pleading to be filed with the State Engineer must be served by the pleading party on every other participant of record. If a participant is represented by an authorized representative or an attorney, service must be made on that representative or attorney. Service must be made before or concurrently with the filing of the pleading with the State Engineer.*

3. *In computing any period prescribed for filing or serving pleading or other document:*

- (a) *Exclude the day of the event that triggers the period;*
- (b) *Count every day, including intermediate Saturdays, Sundays, and holidays; and include the last day of the period, but if the last day is a Saturday, Sunday, or holiday, the period continues to run until 5 p.m. on a day that is not a Saturday, a Sunday or on a holiday on which the State Engineer's offices are closed.*

4. *Any pleading or other document filed for a public meeting, must be filed with the Division of Water Resources to be made publicly available.*

### *Hearings*

#### **Sec. 25 NAC 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 public meeting*, or obtain documents necessary to consider those issues at the hearing *or public meeting*;
- (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 **or public meeting** 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 public meetings**, 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 **future** hearing **or public meeting**, 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. 26 NAC 533.180 Hearings: Objective.** (NRS 532.120, 533.365) The objective of a ~~protest~~ hearing **or public meeting** 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 **Division of Water Resources** ~~Office of the State Engineer~~.

**Sec. 27 NAC 533.190 Hearings: Location; conduct of persons.** (NRS 532.120, 533.365)

- 1. ~~Protest hearings~~ **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, **witness**, 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. 28 NAC 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.]~~

**1. Subject to the specific requirements provided in this section for representation by an attorney, in any proceeding before the State Engineer, a person may represent himself or herself, may be represented by an attorney or any other person who satisfies the State Engineer or the presiding officer that the person possesses the expertise and is otherwise competent to advise and assist in the presentation of matters before the State Engineer. The State Engineer may, for good cause shown, exclude any representative or impose conditions upon the**

*participation of any representative appearing before the State Engineer pursuant to the provisions of this section.*

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

*3. An attorney appearing in any proceeding before the State Engineer must be duly 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 any hearing before the State Engineer:*

*(a) An attorney who is not admitted and entitled to practice before the Supreme Court of Nevada and who does not reside in Nevada must associate with an attorney so admitted and entitled to practice and must file a notice of association with the State Engineer as provided in this section, unless, except as otherwise provided in paragraph (b), the attorney who is not admitted and entitled to practice before the Supreme Court of Nevada and who does not reside in Nevada has appeared before the State Engineer in the 3 years immediately preceding the date on which the case is accepted for filing.*

*(b) Notwithstanding any prior appearances before the State Engineer, the State Engineer, for good cause shown, may require the attorney who is not admitted and entitled to practice before the Supreme Court of Nevada and who does not reside in Nevada to associate with an attorney so admitted and entitled to practice and to file a notice of association as provided in 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 duly admitted and whether the attorney is 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 qualification of the attorney who is required to file the notice to advise and assist in the presentation of the contested case before the State Engineer;*

*(d) Be signed by the attorney who is required to file the notice and by the attorney with whom the attorney who is required to file the notice is associating.*

*6. Except as otherwise provided in subsection 7, the State Engineer or presiding officer 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 required by this section to sign any pleadings and be present at any proceeding on the record.*

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

*(a) Is qualified or has an application for qualification pending for the limited practice of law pursuant to Nevada Supreme Court rule 49.10; 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 as provided in this section. The attorney who is admitted and entitled to practice before the Supreme Court of Nevada and who is identified in a notice of association required by this section must sign any pleadings and be present at any proceeding on the record.*

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

**[4.] 9.** Following the entry of an appearance by an attorney or other agent for a **[party] 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] Party** represented.

**Sec. 29 NAC 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 *documents filed initiating the hearing, whether an* application, ~~and any protests~~ *protest, or Order of the State Engineer [or as modified by the State Engineer]*.
2. The State Engineer may define or limit the issues to be considered.

**Sec. 30 NAC 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, *which may be an electronic copy*, must be filed with the State Engineer.
3. The ~~[applicant and the protestant]~~ **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. *In matters of protested applications, and the hearing of objections, the [The applicant and the protestant] parties* 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]~~ *that party's* case, and for any required copies.
5. *In all other matters, the Parties shall bear equally the fees of the court reporter for reporting and transcribing the hearing, and for any required copies.*
6. 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]~~.
7. *The State Engineer will not accept corrections to a certified transcript of proceedings before the Division of Water Resources.*

**Sec. 31 NAC 533.230 Hearings: Identification of witnesses.** ([NRS 532.120, 533.365](#))  
Before the hearing, the State Engineer may require the ~~[parties]~~ **Parties** to identify the persons intending to offer direct testimony at the hearing. If a **[party] Party** fails to comply with a prehearing order to identify a witness, the State Engineer may refuse to allow that witness to testify.

**Sec. 32 NAC 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] 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.

**Sec. 33 NAC 533.250 Hearings: Written testimony. (NRS 532.120, 533.365)**

1. When ~~[the particular facts of an application and protest indicate]~~ 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]~~ **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. 34 NAC 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]~~ **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.

**Sec. 35 Hearings: Expert Witnesses. A Party may identify expert witnesses where the witness's expected testimony is likely to assist the State Engineer in understanding the evidence or determining a fact in issue. The testimony must be relevant and must be the product of reliable methodology.**

**1. In determining whether an expert's opinion is based upon reliable methodology, the State Engineer shall consider, among other things, whether the opinion is:**

- (a) *within a recognized field of expertise;*
- (b) *testable and has been tested;*
- (c) *published and subjected to peer review;*
- (d) *generally accepted in the expert's community; and*
- (e) *based more on particularized facts rather than assumption, conjecture, or generalization.*

**→No single factor is determinative of whether an opinion is reliable or whether such opinion will assist the State Engineer in understanding the matters at issue.**

*2. The expert witness must be disclosed in advance of the hearing, and the State Engineer may require a separate hearing for qualification of any proffered expert who has not previously been qualified in the field of expertise for which the witness is now being offered.*

*3. In determining whether a person is properly qualified to testify as an expert, the State Engineer may consider the following factors, and these factors are not exhaustive, may be accorded varying weights, and may not be equally applicable in every case:*

- (a) formal schooling and academic degrees;*
- (b) licensure;*
- (c) employment experience; and*
- (d) substantive experience and specialized training*

*↳ within the area of offered expertise.*

**Sec. 36 NAC 533.265 Hearings: Rebuttal evidence.** ([NRS 532.120, 533.365](#)) If the State Engineer authorizes rebuttal evidence, the **[party] participant** may offer in its rebuttal only evidence that directly explains, counteracts or disproves facts offered into evidence by other **[parties] participants** of record.

**Sec. 37 NAC 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] participant** intends to use; and
  - (b) Exchange of exhibits between certain designated **[parties] participants**.
2. If a **[party] participant** fails to comply with a prehearing order to identify or exchange exhibits, the State Engineer may refuse to accept the exhibit into evidence.

**Sec. 38 NAC 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. *In addition to the hard copies, the participant must also provide an electronic copy of all documentary exhibits, including the exhibit list in Microsoft Word or Excel format. Each electronically submitted exhibit must be saved as a separate file, with the name of the Party presenting the exhibit, the exhibit number, and a short description of the document in the title.*
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] participants** or the State Engineer requests a complete copy of the statement, book or other document, the **[party] participants** submitting the excerpt shall provide the complete copy in a timely manner to the person requesting the copy.

**Sec. 39 NAC 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 *Division of Water Resources* ~~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 *Division of Water Resources* ~~Office of the State Engineer~~.

**Sec. 40 NAC 533.310 Hearings: Stipulations.**

1. With the approval of the State Engineer, the ~~parties~~ *participants* 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.

**Sec. 41 NAC 533.320 Hearings: Continuances.**

1. A ~~party~~ *participant* 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~~ *participants* of any request for continuance and accept any responses to the request by the other ~~parties~~ *participants*.
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~~ *participants of the new hearing date*.

**Sec. 42 NAC 533.330 Hearings: Failure to appear.** ([NRS 532.120, 533.365](#)) If a hearing is held and a ~~party~~ *participant* 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.

**Sec. 43 NAC 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~~ *participants* will not be prejudiced by the consolidation.
2. The State Engineer will determine the order in which the ~~parties~~ *participants* 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~~ *participants* responsible for the costs.

**Sec. 44** ~~NAC 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.]

**Sec. 45 NAC 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~~ **participant** to file within a fixed time after the hearing additional specific documentary evidence to become part of the record.

## *Additional Procedures for Protested Applications*

### **Sec. 46 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.*

### **Sec. 47 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 Division of Water Resources.*

### **Sec. 48 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 Division of Water Resources 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 Division of Water Resources, 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. 49 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 participants introduce their evidence and the general procedure to be followed during the course of each 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 participants are represented by counsel or other agent.*
3. *The State Engineer will offer the exhibits of the State Engineer into evidence. Any participant may then object to that evidence.*
4. *The State Engineer may offer the participants 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] participants 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] 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 the protestant] 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 Division of Water Resources 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.*

***Rulemaking - Modification of Rules***

**Sec. 50 NAC 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 **Division of Water Resources** ~~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.

***Additional Procedures for Petitions for Review of Cancelled Permits***

**Sec. 51 Standing.**

**1. In proceedings for the review of cancelled permits, the petitioner shall have standing.**

**2. Any other person who wishes to be involved is subject to the procedures for intervention set forth in section 29.**

## *Additional Procedures for Alleged Violations*

### **Sec. 52 Standing.**

- 1. In enforcement proceedings for alleged violations of Title 48, the permit or certificate holder or licensee against whom the action is brought shall have standing.*
- 2. Any other person who wishes to be involved is subject to the procedures for intervention set forth in section #.*

## *Additional Procedures for Hearing of Objections to a Preliminary Order of Determination in an Adjudication*

**Sec. 53 Nature of Proceeding.** *The hearing of objections is a non-adversary proceeding, intended for the objector to present additional evidence to the State Engineer in support of its timely objection to the Preliminary Order of Determination.*

### **Sec. 54 Standing.**

- 1. In proceedings for the hearing of objections to a preliminary order of determination in an adjudication, objectors as defined in Section 7 shall have standing.*
- 2. As a non-adversary proceeding, there is no provision for intervention of interested parties to respond to an objection filed with the State Engineer.*

### **Sec. 55 Hearing of objections.**

- 1. At a hearing of objections, the State Engineer may permit the questioning of those persons testifying in order to clarify testimony. The cross-examination of persons who testify is not permitted.*
- 2. Persons who are not claimants but who want to express general support or opposition to a particular objection, or who have an opinion regarding the adequacy of the evidence offered in support of the objection by the claimant, may make public comment.*

## ***EXTENSIONS OF TIME TO PLACE WATER TO BENEFICIAL USE***

**Sec. 56 Contents of an application for extension of time to file proof of completion of work or proof of beneficial use to perfect an appropriation.**

- 1. An application for extension of time filed pursuant to NRS 533.380(3) shall be made on the form prescribed by the Division.*
- 2. An application for extension of time shall include the following:*
  - (a) Whether there have been any prior applications, including the number of prior applications and number of years granted by each prior application;*
  - (b) The number of years requested by the application and a detailed explanation as to why the period of time is being requested;*

(c) *A summary of the work performed since the issuance of the permit to perfect the appropriation;*

(d) *If a prior application to extend time to file proof of completion of work has been granted, a detailed explanation of the work actually performed during the prior extension period with evidence of work, including receipts, photographs, construction plans and other evidence of reasonable diligence in the construction of work;*

(e) *If a prior application to extend time to apply water to a beneficial use has been granted, a detailed explanation and evidence of the efforts to apply the appropriated water to beneficial use within the permitted place of use;*

(f) *A detailed explanation of the work expected to be performed during the requested period sought for the extension of time to perfect the appropriation; and*

(g) *Include all supporting documents justifying the requested extension of time to perfect the appropriation.*

3. *If an application for extension of time to file proof of completion of work is for a municipal or quasi-municipal manner of use, must also meet the requirements set forth in subsection 2.*

4. *The Division may request additional information and documentation in support of an application to extend time to apply water to a beneficial use if the Division determines that such additional information and documentation is necessary to consider the application.*

**Sec. 57 Criteria for review and approval or denial of an application for extension of time to perfect an appropriation.**

1. *In reviewing an application for extension of time to perfect an appropriation, in addition to the criteria set forth in NRS 533.380(4), the Division shall consider, without limitation, the following factors:*

(a) *The number of prior applications for extension of time;*

(b) *An evaluation of the applicant's consistent measurable effort to perfect the appropriation, including:*

(1) *Whether the applicant has consistently performed the steps stated in the prior applications to move the project toward completion and to perfect the appropriation;*

(2) *Whether significant actions have occurred demonstrating the applicant's good faith and reasonable diligence to perfect the appropriation;*

(3) *Whether the applicant has provided evidence of the good faith to perfect the appropriation; and,*

(4) *An explanation by the applicant for the failure to perfect the appropriation as set forth in a prior application.*

(c) *The number of years sought in the current application to perfect the appropriation;*

(d) *Whether the applicant has made a demonstration of good faith and reasonable diligence in the construction of works and significant actions made in completing all elements of the project necessary to place the water to a beneficial use;*

(e) Whether the hydrographic basin in which the water right permit is issued has been designated a critical management area and whether there is an approved groundwater management plan.

(f) Any other factor that the Division deems relevant in the consideration as to whether the applicant is proceeding in good faith and reasonable diligence to perfect the water right justifying the need for an extension of time.

2. In considering an application for extension of time, the Division may request additional information and evidence from the applicant if it is deemed necessary to gain a full understanding of the good faith efforts made by the applicant to perfect the appropriation.

**Sec. 58 Protests and Hearings on an Application for Extension of Time.**

1. Where an applicant has requested and received 10 or more years of extensions of time to place water to a beneficial use from the date of the adoption of this regulation, and has made application for extension of time to place water to a beneficial use, the Division shall:

(a) Within 30 days of receipt of the application publish or cause to be published once a week for 4 consecutive weeks in a newspaper of general circulation in the county where the point of diversion is located, a notice of the application, which sets forth:

- (1) That the application has been filed.
- (2) The date of the filing.
- (3) The name and address of the applicant.
- (4) The name of the source from with the appropriation is made.
- (5) The purpose for with the water has been appropriated.
- (6) The number of years of extension sought in the application.

↳ The publisher shall add thereto the date of the first publication and the date of the last publication.

(b) Any person interested may, within 30 days after the date of last publication of the notice of application, file with the Division a written protest against the granting of the application, setting forth with reasonable certainty the grounds of such protest, which except as otherwise provided in subsection 2, must be verified by the affidavit of the protestant, or an agent or attorney thereof.

(c) If the protest filed against the granting of an application by a government, governmental agency or political subdivision of a government must be verified by the affidavit of:

(1) Except as otherwise provided in paragraph (b), the director, administrator, chief, head or other person in charge of the government, governmental agency or political subdivision; or

(2) If the governmental agency or political subdivision is a division or other part of a department, the director or other person in charge of that department in this State, including, without limitation:

(A) *The Regional Forester for the Intermountain Region, if the protest is filed by the United States Forest Service;*

(B) *The State Director of the Nevada State Office of the Bureau of Land Management, if the protest is filed by the Bureau of Land Management;*

(C) *The Regional Director of the Pacific Southwest Region, if the protest is filed by the United States Fish and Wildlife Service;*

(D) *The Regional Director of the Pacific West Region, if the protest is filed by the National Park Service;*

(E) *The Director of the State Department of Conservation and Natural Resources, if the protest is filed by any division of that Department; or*

(F) *The chair of the board of county commissioners, if the protest is filed by a county.*

2. *On receipt of a protest that complies with the requirements of subsection 1, the Division shall advise the applicant whose application has been protested of the fact that the protest has been filed with the Division, which advice must be sent by certified mail.*

3. *The Division shall consider the protest, and may, in its discretion, hold hearings and require the filing of such evidence as the Division may deem necessary to gain a full understanding of the issues involved. The Division shall give notice of the hearing by certified mail to both the applicant and the protestant. The notice must state the time and place at which the hearing is to be held and must be mailed at least 15 days before the date set for the hearing.*

4. *Each applicant and each protestant shall provide information relating to the application or protest to the Division and to each protestant and applicant, as required by the Division.*

5. *The Division shall reject any protest to an application that is not submitted in accordance with Section 1.*

## **PROFESSIONAL WATER RIGHT SURVEYOR LICENSES**

### **Water Right Surveyor Certificate**

**Sec. 59 Qualifications of applicant, application for certificate.**

1. *An applicant for a state water right surveyor certificate must:*

- (a) *Be at least 18 years of age;*
- (b) *Be a licensed professional engineer or land surveyor pursuant to NRS 625; and,*
- (c) *Submit an application and the fee prescribed in NRS 533.080(2).*

2. *An application for a state water right surveyor must be submitted to the Division in person or by mail. The application:*

(a) *Must be completed and signed by the applicant on a form provided by the Division.*

(b) *Must be accompanied by the fee prescribed in NRS 533.080 and include:*

- (i) *Documentation of at least 1 year of experience in surveying or engineering demonstrating knowledge in land surveying and mapping and the measurement of water within the last 5 years, that is determined to be appropriate by the State Engineer;*

- (ii) At least three references attesting to the applicant's knowledge and experience, determined to be satisfactory and appropriate by the State Engineer; and
- (iii) Any other information requested by the State Engineer.

(c) Is valid for 1 year after the date of submission of the application, unless the applicant fails any section of the examination described in Section 61.

**Sec. 60** *The State Engineer may exempt certain requirements for appointment as a state water right surveyor for qualified applicants. Pursuant to NRS 534.080, officers and employees of the Federal Government shall be granted an exemption of the requirement that he or she must be a licensed professional engineer or land surveyor. The State Engineer shall issue a restricted certificate, limiting those officers and employees to perform work under the certificate for the Federal Government only.*

**Sec. 61** *Examinations, denial of certificate, appointment.*

1. Any applicant who applies for a state water right certificate must pass a two-part examination, consisting of the following sections:
  - (a) A written examination consisting of questions testing the applicant's knowledge of land surveying, mapping, the measurement of water, and the regulations and laws of the State Engineer, on which the applicant must obtain a passing score of at least 80 percent; and
  - (b) A test of the applicant's ability to use a standard 7.5 minute topographic map from the United States Geological Survey to provide the public land survey description of the location of a point, which will be scored on a pass or fail basis.
2. The State Engineer will deny an applicant a certificate if the applicant:
  - (a) Fails to notify the Division at least 3 business days before the scheduled examination date that he or she cannot appear for the examination as instructed by a notice to appear before the State Engineer; or
  - (b) The State Engineer will deny an applicant a license after an applicant reschedules a single part of the examination more than twice.
  - (c) Fails to pass any sections of the examination described in subsection 1
3. The State Engineer shall issue a state water right surveyor certificate to an applicant if that applicant has satisfied the qualifications of subsection 1. Any certificate issued expires on June 30 of each year.

**Sec. 62** *Examinations: Notice to appear; failure to appear.*

1. If the State Engineer schedules an examination for an applicant, the State Engineer must send to that applicant a notice of the time and place to appear before the State Engineer for the examination.
2. An applicant who is sent a notice shall appear before the State Engineer in accordance with the schedule established by the State Engineer.
3. If an applicant fails to appear for an examination, he or she must file a new application for a state water right certificate and pay the application fee in effect at the time of reapplication. Any fee previously paid is not refundable.

**Sec. 63** *Examinations: Withdrawal. If an applicant is unable to take an examination for which he or she has been scheduled, the applicant must notify the State Engineer of his or her*

*withdrawal not later than three business days prior to the date for which the applicant was scheduled.*

**Sec. 64 Examinations: Reapplication after failure or denial of a certificate.**

*1. An applicant who fails to pass any part of the examination or has been denied a certificate by the State Engineer pursuant to Section 61, may reapply to take that part of the examination in accordance with Section 61.*

*2. If an applicant fails to pass any part of the examination three times, the applicant may reapply to take the examination only if the applicant furnishes proof that he or she has completed the “Nevada Water Right Surveyor Regulations, Statutes and Forms” course offered through the Division.*

*3. If an applicant reapplies for a state water right certificate pursuant to this section, he or she must file a new application for a state water right certificate and pay the application fee in effect at the time of reapplication. Any fee previously paid is not refundable.*

**Sec. 65 Renewal of certificate: Processing of and action on application.**

*1. The Division shall process each application submitted for renewal of a state water right surveyor certificate in the order in which the applications are received by the Division. If the State Engineer determines that an application is complete and the applicant is qualified, the Division shall renew the certificate for the period ending on June 30 of the year after approval of the renewal.*

*2. The Division shall not renew a certificate, if the State Engineer determines, pursuant to Section 77, that the state water right surveyor:*

- (a) Is not a licensed professional engineer or land surveyor;*
- (b) Is not of good moral standing;*
- (c) Is not otherwise in compliance with this chapter or chapters 533 and 534 of NRS; or*
- (d) Has accumulated 100 demerit points or more against his or her certificate.*

*3. If the State Engineer determines that a state water right surveyor is not of good moral standing or has an unacceptable history of noncompliance with this chapter and chapters 533 and 534 of NRS, the Division may deny renewal, refuse renewal for a specified time, or renew the certificate of the state water right surveyor with conditions that the State Engineer considers appropriate. In making this determination, the State Engineer will consider:*

*(a) The actions of the state water right surveyor with regard to his or her state water right surveyor certificate or other permits issued by the State Engineer pursuant to this chapter or chapters 533 and 534 of NRS.*

*(b) The actions of the state water right surveyor with regard to his or her professional engineer or professional land surveyor license*

**Sec. 66 Requirements to reinstate an expired certificate. To reinstate an expired license, a state water right surveyor whose certificate has been:**

*1. Expired for 1 year or less must:*

*(a) File an application for a state water right surveyor with the associated fee required by Section 59);*

*(b) Pass the examination required by Section 61 or petition the Division, in writing, and receive from the Division permission to forgo the requirement to pass the examination; and*

- (c) Reduce the number of demerit points the state water right surveyor has accumulated against his or her certificate to zero.
- (d) Except as otherwise provided in Section 65, include documentation satisfactory to the Division that the applicant has completed the required course "Nevada Water Right Surveyor Regulations, Statutes and Forms" at least once within two consecutive renewal periods.

2. Expired for more than 1 year must:
  - (a) File a new application with the fee required by NRS 533.080;
  - (b) Pass the examination required by Section 61; and
  - (c) Reduce the number of demerit points the state water right surveyor has accumulated against his or her certificate to zero.

#### *Code of Conduct*

**Sec. 67 Fundamental principles.** A person appointed as a state water right surveyor by the State Engineer shall uphold the code of conduct under his or her professional engineer license or professional land surveyor license pursuant to NAC Chapter 625.

#### *Standards of Practice*

**Sec. 68 Scope of authority under certificate.**

1. A state water right surveyor certificate authorizes the state water right surveyor to make maps, surveys and measurements of flow of water.
2. A certificated state water right surveyor may perform work necessary on behalf of their client relating to the statutes and regulations governing the Division of Water Resources. If a state water right surveyor performs such work, it will be considered to be an official act under the scope of his or her certificate.

**Sec. 69 Responsibilities of certificated state water right surveyor.** A state water right surveyor appointed by the State Engineer:

1. Must prepare water right maps in accordance with the guidelines and rules for the preparation of water right maps issued and made publicly available by the State Engineer;
2. Shall report a measurement of water using the standards of measurement within NRS 533.065;
3. Must perform all surveys in compliance with chapters 533 and 534 of NRS; and,
4. If performing work necessary on behalf of his or her client relating to the statutes and regulations governing the Division of Water Resources, perform that work in compliance with those chapters.

**Sec. 70 Applicability of statutes and regulations.** When conducting work under a state water rights surveyor certificate in this State, a state water right surveyor shall apply all applicable statutes and regulations in addition to the minimum standards of practice for professional land surveyors established in NAC 625.651 to 625.795, inclusive.

**Sec. 71 Responsibility for compliance with standards of practice.** Responsibility for adherence to the minimum standards of practice for conducting work under a state water right surveyor certificate rests with the appointed state water right surveyor in responsible charge of

*the work. Failure on the part of any Nevada state water right surveyor to comply with these minimum standards may be considered by the State Engineer as evidence of gross negligence, professional incompetence or misconduct in the practice of a state water right surveyor.*

#### *Disciplinary Action*

**Sec. 72 Procedure for complaints concerning professional misconduct or incompetence.** Any person who is aggrieved by the alleged professional misconduct or incompetence of a state water right surveyor appointed by the State Engineer may file a complaint with the State Engineer in writing.

**Sec. 73 Grounds for disciplinary or other action.** The State Engineer may take disciplinary action against an appointed water right surveyor or an applicant for certification for:

1. The practice of any fraud or deceit in obtaining or attempting to obtain or renew a certificate or cheating on any examination required by this chapter.
2. Any gross negligence, incompetency or misconduct in the practice of water right surveying.
3. Aiding or abetting any person in the violation of any provision of this chapter or chapter 533 or 534 of NRS.
4. Conviction of or entry of a plea of *nolo contendere* to any crime an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying.
5. A violation of any provision of this chapter or regulation adopted by the State Engineer.
6. Discipline by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to any ground contained in this chapter.
7. Practicing after the certificate of the water right surveyor has expired or has been suspended or revoked.
8. Failing to comply with an order issued by the State Engineer.
9. Failing to provide requested information within 30 days after receipt of a request by the State Engineer concerning an alleged violation.

**Sec. 74 Commencement of action against a state water right surveyor.**

1. Upon receipt of a complaint against a state water right surveyor or after the State Engineer makes a finding that a state water right surveyor has violated a provision of this chapter or chapter 533 or 534 of NRS, the State Engineer shall give written notice of an alleged violation to the water right surveyor by registered or certified mail to the last known address of the water right surveyor which specifies the provision of this chapter or chapter 533 or 534 of NRS that the water right surveyor is alleged to have violated.

2. If, within 30 days after the date of the notice of an alleged violation, the State Engineer:
  - (a) Receives a written response to the notice from the state water right surveyor, the State Engineer shall:
    - (1) Dismiss the complaint if the State Engineer finds that the complaint was unfounded;
    - (2) Assess demerit points against the certificate of a water right surveyor if the response provided is determined unsatisfactory by the State Engineer; or,
    - (3) Schedule the matter for a disciplinary hearing.

*(b) Does not receive a written response to the notice from the state water right surveyor, the State Engineer shall:*

*(1) Assess the maximum number of demerit points against the certificate of a water right surveyor; or,*

*(2) Schedule the matter for a disciplinary hearing.*

*3. The State Engineer may attempt to reach a settlement on any complaints filed before holding a disciplinary hearing.*

**Sec. 75 Water right surveyor to provide written notice of disciplinary action taken by another entity.**

*1. A water right surveyor who has been disciplined by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency shall notify the Board in writing of such disciplinary action.*

*2. The written notice must set forth the grounds, terms and effective date of the disciplinary action.*

*3. The water right surveyor shall submit the written notice to the State Engineer within 30 days after the date on which the disciplinary action is imposed and state whether the disciplinary action is final or on appeal.*

*4. Failure to provide the written notice required pursuant to this section is an aggravating factor in any disciplinary action taken by the State Engineer against the water right surveyor.*

**Sec. 76 Assessment of demerit points against certificate of state water right surveyor; suspension.**

*1. The Division shall assess demerit points against the certificate of an appointed water right surveyor who is found by the State Engineer to have violated any provision of chapter 533 or 534 of NRS, in addition to suffering the penalties prescribed by NRS chapter 533.355, pursuant to the following table:*

<i>Classification of Violations</i>	<i>Maximum Demerits</i>
<i>Preparation of a Map</i> <i>Receiving 3 or more return for corrections on maps submitted to the State Engineer during a certificated period (demerits are assessed on the third return for correction and are assessed for each subsequent return for correction).....</i>	<i>10</i>
<i>Preparation of a Water Right Application, Proof or Extension of Time</i> <i>Receiving 3 or more return for corrections on any water right application, proof or extension of time form from the Division submitted to the State Engineer during a certificated period (demerits are assessed on the third return for correction and are assessed for each subsequent return for correction).....</i>	<i>10</i>
<i>Conducting a Survey</i> <i>Failing to conduct a survey pursuant to this chapter or chapters 533 and 534 of NRS.....</i>	<i>10</i>
<i>Certification</i>	

<i>Classification of Violations</i>	<i>Maximum Demerits</i>
<i>Intentionally making a material misstatement of fact in an application for a water right surveyor certificate.....</i>	<i>100</i>
<i>Practicing without a Valid Certificate</i>	
<i>Preparing maps or conducting surveys without a water right surveyor certificate.....</i>	<i>75</i>
<i>Practice of Fraud or Deceit</i>	
<i>Failing to provide the Division with written notification of disciplinary action taken by another entity.....</i>	<i>25</i>
<i>Intentionally making a material misstatement of fact on any water right application, proof or extension of time form from the Division submitted to the State Engineer.....</i>	<i>50</i>
<i>Miscellaneous</i>	
<i>Any other violation of any of the provisions of this chapter or chapters 533 or 534 of NRS.....</i>	<i>To be determined by the Division based on the severity of the violation, but not to exceed 100</i>

**3. If a certificated water right surveyor accumulates:**

(a) *Less than 169 demerit points, the State Engineer may, after giving notice and holding a hearing pursuant to Section 77 to determine that the violations which resulted in the demerit points occurred, apply conditions that the State Engineer considers appropriate, suspend or revoke the certificate of the water right surveyor indefinitely.*

(b) *169 or more demerit points, the State Engineer shall, after giving notice and holding a hearing pursuant to Section 77 to determine that the violations which resulted in the demerit points occurred, apply conditions that the State Engineer considers appropriate or suspend or revoke the certificate of the water right surveyor indefinitely.*

**4. If the State Engineer suspends or revokes the certificate of a water right surveyor, the Division shall notify the water right surveyor that his or her certificate is suspended or revoked and the water right surveyor is prohibited from engaging in any activity for which a water right surveyor certificate issued pursuant to NRS 533.080 is required until the certificate of the water right surveyor is reinstated.**

**Sec. 77 Revocation or denial of license.**

**1. The State Engineer may revoke or refuse to reissue a certificate to a state water right surveyor if the State Engineer determines, after an investigation and a disciplinary hearing, that the state water right surveyor has:**

- (a) *Sworn falsely to a map or survey pursuant to NRS chapter 533.420;*
- (b) *Supplied false information to a client; or*
- (c) *Been found incompetent as a water right surveyor by the State Engineer.*

2. *A water right surveyor whose certificate has been revoked pursuant to this section or subsection 3 of Section 76 may not have the certificate reinstated unless an action for review by the district court is filed pursuant to NRS 533.450.*

**Sec. 78 *Reinstatement of certificate; removal of demerit points***

- 1. *A water right surveyor whose certificate has been suspended pursuant to subsection 3 of Section 76 may have the certificate reinstated if the water right surveyor:*
  - (a) *Satisfies the requirements set forth in subsection 2 of Section 66;*
  - (b) *The State Engineer finds that the water right surveyor is competent to engage in the practice of water right surveying in State of Nevada; and*
  - (c) *Resolves any outstanding complaints related to his or her certificate as a water right surveyor to the satisfaction of the Division.*
- 2. *The Division shall reduce the number of demerit points accumulated against the certificate of a water right surveyor whose certificate has been suspended or revoked and reinstated to zero.*
- 3. *Demerit points assessed against the certificate of a water right surveyor may be removed by the Division as follows:*
  - (a) *Five demerit points may be removed for each credit unit of continuing education approved by the Division and successfully completed by the water right surveyor, as determined by the Division up to a maximum of 50 points per year. The credit units of continuing education that must be completed for the purposes of the removal of demerit points pursuant to this paragraph are in addition to those required by Section 65.*
  - (b) *One-half of the demerit points assessed against the license of a water right surveyor may be removed if the water right surveyor is determined by the State Engineer to not have violated a provision of this chapter or chapters 533 and 534 of NRS for the entire year following the issuance of the demerits.*
  - (c) *The Division shall reduce the number of demerit points accumulated against the license of an active water right surveyor who has not violated a provision of this chapter or chapters 533 and 534 of NRS for 4 consecutive years following the issuance of demerits to zero.*
  - (d) *Twenty demerit points may be removed if the water right surveyor takes and passes the written examination for a water right surveyor certificate. The Division may remove demerit points pursuant to this paragraph once every year.*