

PROPOSED REGULATION OF THE STATE ENGINEER

LCB File No. R169-20

December 10, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

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

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

Legislative Counsel’s Digest:

Upon approving an application for a permit to appropriate water, existing law: (1) requires the State Engineer to set deadlines by which construction related to the appropriation of water must be completed and application of water to beneficial use must be made, respectively; and (2) authorizes the State Engineer, under certain circumstances, to extend those deadlines. With limited exceptions, any number of extensions may be granted, but a single extension may not exceed 5 years. (NRS 533.380, 533.390, 533.410) Existing law requires the State Engineer to adopt regulations to carry out these provisions. (NRS 533.380)

Sections 3-7 of this regulation, respectively, define the terms “applicant,” “beneficial use,” “perfect an appropriation,” “proof of beneficial use” and “proof of completion.” **Sections 8 and 9** of this regulation sets forth the State Engineer’s interpretation of various terms relating to the measure of reasonable diligence of the holder of a permit to perfect an appropriation of water.

Section 10 of this regulation sets forth certain requirements for an application for an extension of time to file proof of completion of work or proof of beneficial use.

Existing law requires an application for an extension to be accompanied by proof and evidence of the good faith and reasonable diligence with which the applicant is pursuing the perfection of the application. (NRS 533.380) **Section 11** of this regulation provides that in determining whether the applicant has demonstrated good faith and reasonable diligence, the State Engineer will consider certain evidence of significant action towards perfecting the appropriation for various manners of use.

Section 12 of this regulation sets forth certain factors the State Engineer will consider when evaluating whether to approve an application for an extension.

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

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

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

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

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

1. Carrying out all the requirements of a permit to appropriate water to place water to beneficial use which is finalized through the issuance of a certificate of appropriation and may include, without limitation, constructing diversion works, installing measuring devices, submitting proof of completion, placing water to beneficial use and submitting proof of beneficial use; or

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

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

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

Sec. 8. For the purposes of sections 2 to 12, inclusive, of this regulation and NRS 533.380 and 533.395, the State Engineer interprets the term “project” to mean a planned enterprise or undertaking pursued individually or collaboratively to achieve a specific goal. The term includes, without limitation, a subdivision with multiple phases.

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

1. “Integrated system” to mean a complex or unitary whole consisting of separate, interrelated elements. The term includes, without limitation, a ranch with multiple fields and the components of a water system.

2. “Steady application of effort” to mean, under all the facts and circumstances and as demonstrated by evidence, affirmative and significant action taken by the holder of a permit to perfect an appropriation before the time set by the State Engineer pursuant to NRS 533.380, including, without limitation, any extension previously granted by the State Engineer.

Sec. 10. 1. An application for an extension of time to file proof of completion or proof of beneficial use pursuant to NRS 533.380 must be made on the form prescribed by the Office of the State Engineer and, in addition to the requirements of subsection 3 of NRS 533.380, must include, without limitation:

(a) The number of years the applicant is requesting to extend the time in which to file proof of completion or proof of beneficial use and an explanation for the amount of time requested;

(b) A summary of the work performed to perfect the appropriation, beginning on the date the permit was issued;

(c) If the application for an extension is for a municipal or quasi-municipal use, any information required to address the factors considered by the State Engineer pursuant to subsection 4 of NRS 533.380;

(d) A description of any previous applications for an extension of time that have been submitted by the applicant since the effective date of this regulation, which must include, without limitation, the number of years granted for each previous application filed;

(e) If any previous application for an extension of time has been granted, a detailed explanation of the work actually performed during the most recent extension and evidence documenting the work performed, which may include, without limitation, receipts, photographs, construction plans or any other evidence of reasonable diligence in the construction of work or applying water to beneficial use;

(f) A detailed explanation of the work expected to be performed if the extension is granted;

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

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

(i) Any other information requested by the State Engineer.

2. The State Engineer will not consider any protest or objection to an application for an extension of time.

Sec. 11. 1. When considering whether an applicant has demonstrated good faith and reasonable diligence to perfect an appropriation as required by NRS 533.380, the State

Engineer will consider any evidence of significant action toward perfecting the appropriation submitted by the applicant, including, without limitation:

(a) For all manners of use:

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

(2) The installation of a meter at the location of discharge of the well;

(3) The installation of pipes or ditches to convey water to the place of use;

(4) The installation of a headgate, weir, dam or other diversionary structure at the point of diversion;

(5) The improvement of a spring;

(6) The placement of a portion of the water to beneficial use in accordance with the terms of the permit to appropriate water;

(7) Actions undertaken to complete the permitting or licensing requirements of any federal, state or local agency; and

(8) Any other action considered by the State Engineer to constitute significant progress in the perfection of a water right;

(b) For commercial use, the construction of infrastructure and facilities;

(c) For construction use:

(1) The number of trucks filled from a standpipe for dust control or compaction; and

(2) The progress of all projects where the water for which the permit has been issued is used;

(d) For domestic use, the construction of a single family residence or an accessory dwelling unit;

(e) For industrial, utility, mining, milling or dewatering use, the construction of facilities, including, without limitation, foundations, buildings, power plants, processing plants, piping and instrumentation;

(f) For irrigation use:

(1) The installation of sprinklers, wheel lines, pivots or other components of an irrigation system; and

(2) The construction of ditches, berms, check dams or any other structure used to deliver and control water on the field within the place of use;

(g) For supplemental irrigation use, the irrigation performed under the primary right to appropriate water;

(h) For municipal or quasi-municipal use:

(1) The number of completed units in the subdivision or water system;

(2) The dedication of a right to appropriate water to a subdivision, parcel or tract and the recording of the associated map within the place of use;

(3) The completion of a water resource plan required by NRS 278.0228; and

(4) The granting of any state or local approval, including, without limitation, approval from the Public Utilities Commission of Nevada;

(i) For recreational use, the construction of any infrastructure necessary for recreational purposes; and

(j) For stockwater or wildlife use:

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

(2) The construction of pipes, float valves, troughs or any similar device; and

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

2. As used in this section, “supplemental irrigation use” means the use of an additional appropriation of water for irrigation purposes to supplement an existing appropriation of water at the place of use of the existing appropriation during a period when the full amount of the existing appropriation is unavailable.

Sec. 12. *In reviewing an application for an extension of time to file proof of completion or proof of beneficial use submitted pursuant to NRS 533.380, the State Engineer will consider, without limitation:*

1. The number of prior applications for an extension of time submitted by the applicant since the effective date of this regulation;

2. The consistent, measurable efforts of the applicant to perfect the appropriation, including, without limitation:

(a) Whether the applicant has consistently completed the actions to perfect the appropriation set forth by the applicant in previous applications for an extension;

(b) Any significant actions set forth in section 11 of this regulation taken by the applicant to demonstrate his or her good faith and reasonable diligence to perfect the appropriation; and

(c) Any explanation provided by the applicant for his or her failure to perfect the appropriation by the date set forth in his or her permit or previous application for an extension;

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

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

5. Whether the hydrographic basin in which the permit to appropriate water has been issued has been designated a critical management area by the State Engineer pursuant to subsection 7 of NRS 534.110 and, if so, whether there is an approved groundwater management plan for the basin;

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

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

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

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