

**Appendix C:**

**Water Rights Manual**

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## **WATER RIGHTS MANUAL**

### **I. Introduction**

Nevada's water law is based on two fundamental principles: prior appropriation doctrine and beneficial use. In the 19<sup>th</sup> century, the State of Nevada recognized the need to write legislation to manage one of the most precious natural resources it possesses, water. The State adopted a system of water law commonly known as prior appropriation. The doctrine was first initiated by early miners, which simply followed the same rules of the land they used in resolving many disputes over the minerals they competed for on public lands "first in time, first in right". This early rule dictated that the earliest miner to put the water to use had a right to continue using it to the exclusion of others. Early State courts decisions recognized these as water rights based on the miners' customs. Over the years this doctrine of prior appropriation evolved and became the primary governing water right system for Nevada and most of the other western states.

In 1968, F. E. Rush divided Nevada into 14 hydrographic regions, which were subsequently divided into 232 individual hydrographic basins based on topography and hydrologic boundaries. The United States Geological Survey (USGS) was commissioned to conduct reconnaissance studies of many of the individual hydrographic basins to better understand the available water (perennial or safe yield) that could be appropriated without overdrafting the basins. It is by these reconnaissance reports that today's State Engineer and the Division of Water Resources manage both surface and groundwater appropriations from the hydrographic basins in Nevada.

## **II. Water Right Law**

Within the United States water rights allocations can be grouped into three systems of water law: riparian, prior appropriation, and hybrids systems.

- A. Riparian Doctrine** – The Riparian Doctrine applies to most of the states east of the Mississippi where water is usually not in short supply. Landowners bordering a waterway are considered riparians. Their location gives them certain appurtenant rights under the doctrine for “reasonable use” of the water on land adjacent to the waterway. The definition of “reasonable use” is usually relative to all other users. If there is insufficient water to satisfy the reasonable needs of all riparians, all must reduce usage of water in proportion to their rights, sometimes based on the amount of land they own. Because riparian rights inhere to land ownership, they do not need to be put to beneficial use in order to be kept alive. This signifies that landowners may initiate new uses at any time and others must adjust in response.
- B. Appropriative Doctrine** – The Appropriate Doctrine allows a person to divert water from a water source to non-riparian land to put the water to beneficial use. The right to make such a diversion is then protected based on priority. That priority is usually the date on which the first action was taken to place water to beneficial use. Prior to the adoption of a statutory system for the creation of water rights, water rights could be created by simply putting the water to beneficial use. Now the water right are created only after applying to the State Engineer based on a statutory scheme.
- C. Hybrid Doctrine** – The Hybrid Systems (Also known as the California Doctrine) include several states that originally recognized riparian rights, but later converted to a system of appropriation while preserving existing riparian rights. The historical roots of hybrid systems vary among jurisdictions. The common denominator is that each state recognized riparian rights from the start but later adopted the prior appropriation system because it was believed to be more suitable for allocation of rights to use water. These states include: California, Kansas, Mississippi, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, and Washington. For West

Coast and Central states that lie between higher elevation arid land and lower land with greater rainfall, neither the riparian system nor the appropriation system was entirely fitting.

**D. Role of government under Nevada appropriation doctrine.**

1. Legislative Branch – The Nevada Legislature adopted Nevada Revised Statutes (NRS) Chapters 532 – State Engineer and 534 - Underground Water and Wells, to establish the Office of the Nevada State Engineer and to create a statutory scheme for the adjudication of water rights and the appropriation of water in the State of Nevada.
2. Executive Branch – The Nevada State Engineer is the Executive Branch Officer who makes decisions regarding state water rights in Nevada. The State Engineer is appointed by the Governor and is within the Department of Conservation and Natural Resources.
3. Judicial Branch – The Courts review decisions of the Nevada State Engineer. A decision must be appealed within thirty (30) days and the State Engineer's decision is presumed to be correct. New evidence may not be admitted and the State Engineer's decision will be upheld if it is based on substantial evidence.
4. The Courts also adjudicate water rights and administer water right decrees. Water right decrees may address the amount of water to which each party is entitled, the source of the water, the area to which it may be applied, and the priority date for each use. Such decrees govern the Truckee, Carson, Walker, and Humboldt rivers, as well as most of the streams that run off the east slope of the Sierra Nevada.

### **III. Water Rights In Nevada (Prior Appropriation)**

#### **A. Key dates to remember:**

1. 1903: State Engineer's Office created (NRS Chapter 532 – State Engineer): In order for the Bureau of Reclamation to come into Nevada and build a federal reclamation project the State needed a state water regulatory agency. The Bureau of Reclamation started in 1902 and upon creation of the State Engineer's Office it was possible to begin the Derby Dam on the Truckee River, which is the first dam constructed by the Bureau.
2. 1905: Nevada Water Law (NRS Chapter 533 – Adjudication of Vested Water Rights, Appropriation of Public Waters): The law states that water belongs to the Public. Nevada Water Law is based on appropriation for beneficial use. Water Rights issued and/or acknowledged by the State Engineer belong to the owner of record.
3. 1913: A prescriptive Right to water cannot be acquired by adverse use or possession (NRS 533.060 - Right to use limited to amount necessary; loss or abandonment of rights; no acquisition of prescriptive right; reservation of rights by State.)
4. 1939: Ground Water Law (NRS Chapter 534 – Underground Water and Wells): Underground water sources belong to the public and are subject to appropriation for beneficial use.

**B. Beneficial Use** - Beneficial use is the basis, the measure, and the limit of the right to use water. Beneficial uses in Nevada include irrigation, stock watering, mining and milling, domestic, recreation, wildlife, municipal and industrial, and power plants (NRS 533.050 – Beneficial use of water declared a public use; eminent domain).

**C. Place of Use** - Water used for beneficial purposes to remain appurtenant to place of use (NRS 533.040). For example, the holder of water rights for irrigation cannot change the use of the water to municipal without permission from the state engineer's office.

**D. Right to Divert Water** – The right to divert water ceases when necessity for use no longer exists (NRS 533.045). This statute is applicable in the instance where a water right has been traditionally used for irrigation, and subsequently the agricultural use for the water is no longer available due to development. The holder of the water right does not have the right to divert the water for uses other than irrigation (without the approval of the state engineer), and therefore their right to divert the water is no longer applicable if holder is no longer using the water for their traditional irrigation purposes.

**E. Appropriative Rights**

1. Both surface and groundwater rights are established through the appropriative process.
2. Both surface and groundwater rights are under the jurisdiction of the State Engineer
3. The State does not recognize riparian right

**F. Vested Right/Adjudication**

1. Vested Water Rights are Rights, either surface or groundwater acquired through more or less continual beneficial use and local custom prior to the enactment of water law pertaining to the source of the water. They are "vested" as of the date the rights determined to be put to beneficial use. The Vested Water Rights are claimed through a judicial process known as Adjudication. This is accomplished through the courts whereby water rights are determined or decreed by a court of law.
2. Role of State Engineer - The State Engineer may initiate an adjudication to establish the priority and quantity of vested water rights.
3. Role of Court - State and/or Federal - Once an adjudication is complete, the State Engineer seeks State Court approval for the determination made in the adjudication process.
4. Characteristics of vested rights - Surface water rights are required to have been in beneficial use initiated prior to the enactment of Nevada's water law in 1905. Vested rights from an underground source are required to have been initiated prior to 1913.

## **G. Federal Reserved Rights**

1. Tribal Rights - Most Indian Tribes for whom Reservations were established have a "federal reserved" water right sufficient to allow for their use in connection with irrigation of these lands. These rights are commonly known as "Winters Rights". These Water Rights inherited their name from the U.S. Supreme Court precedent decision (*Winters v. United States*, 207 U.S. 564 [1908]) in which the Court prohibited any uses by non-Indians that interfered with the Indian tribes' use of their reserved water. In *Winters*, the Court held that when reservations were established, Indian tribes and the United States implicitly reserved, along with the land, sufficient water to fulfill the purposes of the reservations. The ruling rests on the principle that Indian tribes retain all rights not explicitly relinquished. The court recognized these rights as having priority date coinciding with the date the reservation was established, thus providing a means to integrate federally reserved rights with Appropriative Water Rights recognized under state law. Since Reserved Rights are not created by State law, *Winter Rights* retain their validity and seniority regardless of whether tribes have put the water to Beneficial Use. Until recently, *Winter Rights* were thought to be only usable within the Reservation, but a decision lately changed this interpretation. The Pyramid Tribe successfully moved 19,000 acre-feet of water off the Reservation to the Truckee River (upstream) for in stream flows (Fish). This set a presidency for Reserve Rights being moved off a reservation with a manor of use change.
2. Characteristics of Federal Reserve Rights - they are established outside the state regulatory scheme, they are not subject to forfeiture for non-use and they are generally not quantified until an adjudication is completed. They have a priority, which dates back to the establishment of the reservation. The State Engineer decided that they only pertain to or are associated with Surface Water Rights. This may be argued due to other states with Federal Reserved Rights Underground (i.e. Arizona)
3. Other Federal Reserved Rights - The doctrine development allows federal agencies, including the Forest Service, Bureau of Land Management and the

Defense Department, among others, to claim sufficient water rights to carry out their objectives on lands they manage and/or own. The Federal Government owns and/or manages approximately 86% of the land in Nevada.

**H. How Federal Reserve, Vested, and Appropriative Rights Exist Together -**

State Permits, and even Vested Rights may be junior to Federal Reserve Rights when they are finally quantified. Federal Reserve Rights however can only maintain the reserved water rights sufficient for the primary purpose for which the land was withdrawn from the public. For example a national park can hold the water rights which are necessary to maintain that park (streams, rivers, lakes, etc.) but they cannot hold more water rights than are necessary, meaning they cannot arbitrarily hold more than the predetermined amount for that particular park.

#### **IV. Process of Appropriating Water in Nevada**

**A. Application/Map** - the State Engineer requires certain information in order to initiate the process of appropriation. A map must accompany the application or be filed within 30 days. The map must show the point of diversion and the place of use. The map must be prepared by a licensed water rights surveyor.

1. Applicant – The application must include the name of the corporation, natural person or governmental entity applying for the water right. The applicant must have the ability to develop the water which they are applying for (NRS 533.370). The applicant must be able to demonstrate that the applicant has a “good faith intent” to construct the work, the financial ability, and reasonable expectation that the applicant will actually construct the work.
2. Date of Application/Priority - Priority is established on the date of filing and payment of fees.
3. Source - In the case of a stream system, the river or tributary must be identified.
4. Point of Diversion - must be described with specificity. A 1/4 1/4 section with ties to section corner is usually required.
5. Place of Use - The place where the water will be used must be described with specifics. Exceptions to this rule would include stock water or instream flows.
6. Manner of Use - This is the beneficial use the applicant intends to make of the water applied for. Recreation, irrigation, stock water, mining and milling, quasi-municipal, hydroelectric power generation, municipal & industrial, and instream flows are all legitimate uses. The use of the water which is being applied for will usually dictate the map needed.
7. Season of Use - Year round or a specified period of the year are allowed. Irrigation uses and stock water are sometimes used less than the full year to reflect the growing or grazing season. Often an application will be crafted to exclude diversions during certain environmentally sensitive times of the year to avoid any conflict or need to mitigate such diversions.

8. Diversion Rate (cfs) - A rate of flow is not a quantity. The rate of the diversion usually expressed in cubic feet per second (CFS) or gallons per minute (GPM). One cfs is equal to 448.83 gpm.
9. Annual Use (expressed in Acre Feet) or duty - the annual use of water will need to be quantified. This should be expressed in acre-feet per year or million gallons per year. An acre-foot is the volume of water, one foot deep, over an acre of land. One acre-foot is equal to 325,851 gallons. Once the application has been reviewed by the State Engineer the application will be published within 30-days in the local paper weekly for 4 consecutive weeks (NRS 533.360). If the application requires the drilling of a well the applicant shall mail a copy of the notice of application to each owner of real property containing a domestic well that is within 2500 feet of the proposed well. Depending on the outcome of the public and private notices the application will be provided a classification of either Ready for Action (RFA) or Ready for Action "Protested" (RFP).
10. Protested - If the application receives a classification of RFA it signifies that no party has protested the application for the water rights in question. However if the application is classified as RFP it has been protested at some point during the 4 weeks of public notification. According the NRS 533.365 the protocol is:
  1. Any person interested may, within 30 days from the date of last publication of the notice of application, file with the State Engineer a written protest against the granting of the application, setting forth with reasonable certainty the grounds of such protest, which shall be verified by the affidavit of the protestant, his agent or attorney. On receipt of a protest, the State Engineer shall advise the applicant whose application has been protested of the fact that the protest has been filed with him. This notice shall be sent by certified mail.
  2. The State Engineer shall consider the protest, and may, in his discretion, hold hearings and require the filing of such evidence as he may deem necessary to a full understanding of the rights involved.

The State Engineer 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. If a hearing is deemed necessary, the protocol for a hearing is generally similar to court of law proceedings. At a minimum, the hearing will take place in the Division of Water Resources Hearing Room with two hearing officers, a court reporter, the applicant (or representative), and protestor (or representative). If the protest is large enough, it may be moved to the legislative building and include expert witnesses for the applicant and protestor(s), the State Hydrogeologist, and Deputy(s) and State Engineer. The proceedings usually start with open arguments from both parties followed by expert witnesses (if required) for both parties followed by questions by the representative panel from the Division of Water Resources. The representative panel usually determines which party will present their case first. The representative panel usually does not make a final decision during the hearing proceeding. They usually make their final decision a day or two later and write it up as an official ruling.

3. The State Engineer shall adopt rules of practice regarding the conduct of such hearings. The rules of practice must be adopted in accordance with the provisions of NRS 233B.040 to 233B.120, inclusive, and codified in the Nevada Administrative Code. The technical rules of evidence do not apply at such a hearing.

## **B. Permits**

1. State Engineer's criteria - The criteria for granting or denying permits (NRS 533.37-3) provides that the State Engineer should reject the application where there is no unappropriated water in the proposed source or where the proposed use or change of use conflicts with existing rights or with protected interests in existing domestic wells or threatens to prove detrimental to the public interest. The State Engineer is authorized to reject, without publication, any application for a similar use of water where the use of the water has been rejected on those grounds.
2. Terms and conditions of permit - Some of the conditions which have been placed on permits include the requirement to meter the flow, monitor environmental programs, mitigate any problems associated with the diversion or the Engineer can impose a limited term on the ability to appropriate. Some permits have been limited until such time as a municipal water provider can supply the water to the applicant. After that time, the permit will expire.
3. Time Schedule – The applicant is responsible for knowing when the proof of completion is due and when the proof of beneficial use is due. It is advisable not to wait until receiving the notice that proof is due to begin filing. The permit will include specific dates. The applicant must have an understanding as to who will be responsible for these filings.
4. Types of permits - Be very careful to read and understand the conditions, which the State Engineer has placed upon the permit, as it may vary on a case by case basis.

**C. Proof of Completion of Works** - The permit will include the time limit for filing this proof. Usually the State Engineer allows the applicant two years for the construction of a groundwater well. This form must be completed on blue paper.

**D. Proof of Beneficial Use/Map** - The permit will include the time limit for filing this proof. Usually two years beyond the time when the work are completed or 5 years from the time the permit is granted. It is very important that the filing date is known.

- E. Water Right Certificate Issuance** - This is the ultimate goal. When the certificate is issued it is an acknowledgment by the State Engineer that the permit process is complete and identifies the quantity of water put to beneficial use and granted to the applicant. The certificate that is finally issued is the final statement of the priority and terms of the right. Often the certificate will be granted for a quantity of water less than what was applied for in the permit. The State Engineer will only grant the portion of the permits duty and rate of flow that the applicant has proven to be put to beneficial use. The remainder of the permitted water is put back into the basinal inventory for the next applicant in line that wants to appropriate water.
- F. Extension of Time NRS 533.395** - Criteria for granting an "Extension of Time" is the "measure of reasonable diligence" in the steady application of effort to perfect the application in a reasonably expedient and efficient manner under all the facts and circumstances. The unwritten rule is usually 5-years of extensions but the number of extensions can be greatly dependent on the basin in question and competition for water. In order to request an extension of time, the applicant must submit the appropriate form on pink paper.
- G. Denial or Cancellation of Permit** - The State Engineer can cancel a permit for lack of due diligence (NRS 533.395). This usually occurs because of the applicant failed to file in a timely fashion the proofs of beneficial use. Once a notice of cancellation has been issued, the applicant has 60-days to seek reconsideration of cancellation. In the process of applications, permits, and Water right Certificates; applications are "denied", Permits are "cancelled", and Water Certificates are "abandoned or forfeited".
- H. Extension of Time for Ammended Application** – in the event that the applicant feels that it is necessary to amend an application that has been submitted, the appropriate application for extension must be submitted to the state engineer.

## **V. Interbasin Transfer of Water**

Nevada water law has always allowed for interbasin transfers. Due to the States arid climate and limited water resources, transferring water from one basin to another is not new in Nevada. The first interbasin transfer was from Marlette Lake to Virginia City in 1873. Provisions were added as NRS 533.370(4) to provide additional criteria for the State Engineer to consider when reviewing interbasin change applications. The criteria include:

- a. Whether the applicant has justified the need to import the water from another basin;
- b. If the State Engineer determines that a plan for conservation of water is advisable for the basin into which the water is to be imported, whether the applicant has demonstrated that such a plan has been adopted and is being effectively carried out;
- c. Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported;
- d. Whether the proposed action is an appropriate long-term use which will not unduly limit the future growth and development in the basin from which the water is exported; and
- e. Any other factors the State Engineer determines to be relevant.
- f. A county may impose a tax on certain transfers of water by the county of origin to another county, with prior approval of the State Engineer, of \$10 per acre-foot per year on the transfer (NRS 533.438). All money collected from a tax must be deposited in a trust fund for the county. The principle and interest of the trust fund may be used by the county only for the purposes of economic development, health care, and education.

## **VI. Change Applications.**

Change applications are required under Nevada state law whenever a person seeks to change the place of use, manner of use, or point of diversion of a water right.

**A. Temporary Change Applications** - Gives authority to the State Engineer to grant a temporary change application (NRS 533.345). A water right owner may be able to change a place of use, manner or use, or point of diversion for a period not to exceed one year through this process. These applications were primarily setup for emergency situations; for instances a rancher needs to drill a new well because the old well has failed and he was unaware of the failed well until he attempted to turn it on. The statute directs the State Engineer to apply the same criteria he would on a permanent change applications.

### **B. Permanent Change Applications**

1. The process/types of changes - provides that the place of use, manner of use, or point of diversion can be changed for a water right through an application to the State Engineer (NRS 533.370). The statute directs the State Engineer to consider whether the change will cause harm to existing rights, threaten to prove detrimental to the public interest, or harm domestic well.
2. Additional criteria - Considerations by State Engineer in granting permit.
  - a. Financial capability
  - b. Good faith intent to construct/speculation
  - c. Hydrologic Conditions
3. Possible loss of right - The State Engineer has recently applied a reduction on water rights being changed in order to protect the groundwater system. In some cases, the State Engineer has reduced a right by as much as 30 percent. (i.e. the holder of 1,000 ac-ft of water rights for irrigation may have those rights reduced to 675 ac-ft upon changing the rights from irrigation to municipal, depending on the discretion of the state engineer.)
  - a. Alpine Decree and Carson Lake and Pasture.

- b. Dayton Valley (Irrigation right converted to Quasi-Municipal creating a loss in the secondary recharge portion of the rights.)
4. Mitigation - The State Engineer may approve a right based on an agreement by the applicant to mitigate any injury to existing rights. A pre-condition of such an approval is that the water right owner controls sufficient water rights to be used for mitigation.

## **VII. Special Types of Rights**

**A. Storage Rights** - Obtaining and using a storage right is a two-part process (NRS 533.440).

1. Primary permits - First an application must be filed and a permit issued to construct the dam. This permit is known as a "primary permit." This application contains information about the applicant and the proposed dam.
2. Secondary permits - Those who will put the water to beneficial use must file a Secondary Application, which describes the applicant, place of use, manner of use, and other information contained in a normal application to appropriate water. In addition, the applicant must provide evidence that an agreement has been entered into with the owner of the reservoir for a permanent and sufficient interest in such reservoir to impound enough water for the purpose set forth in the application. Upon filing Proof of Completion of Work, a final Certificate of Appropriation shall be issued as other certificates are issued, except that the certificate shall refer to both the works described in the Secondary Permit and the reservoir described in the Primary Permit.

**B. Wastewater/Effluent Use Permits** - Effluent discharged from the final treatment within a sewage collection and treatment system shall be considered as water subject to appropriation under the secondary permit system used for dams.

**C. Groundwater Recharge & Recovery Permits** - While somewhat similar to water rights, groundwater recharge and recovery systems are permitted under a different section of the law (NRS 534.250 - Project for recharge, storage and recovery of water: Permit required; issuance, contents, modification and assignment of permit; monitoring requirements).

**D. Environmental (NRS 533.437)** – Environmental Permits require a copy of a letter or order issued by the NDEP requiring the applicant to take steps to protect the environment along with any other information considered necessary to understand the need of the appropriation.

**E. Supplemental rights** – Occasionally groundwater rights can be associated with surface water rights (i.e. Carson Valley ranchers use surface water until July then turn on high production groundwater wells). Supplemental Rights cannot stand alone as water rights, the holder of the rights must also have a “Base Right” associated with the Supplemental Rights. A Base Right is the primary permit or Water Certificate originally granted by the State Engineer prior to any change applications or supplemental rights applied for.

## VIII. Losing Existing Rights

**A. Abandonment** – A water right which has not been put to Beneficial Use for generally five or more years, in which the owner of the water right states that the water right will not be used, or takes such actions that would prevent the water from being beneficially used. Based on evidence of intent to abandon a water right, the State Engineer can declare a right abandoned (NRS 534.090).

**B. Forfeiture** - If a right is not used for five successive years, the State Engineer can declare it to be forfeited (NRS 534.090). Forfeiture previously applied to surface water rights that were created after 1913 and groundwater rights. However in 1999, the Legislature eliminated the ability of forfeiture to work against a surface water right, therefore forfeiture currently applies only to groundwater rights. It is possible to file an application for an extension of time to prevent forfeiture.

### C. Recent Legislation

1. Town of Eureka - Ability to cure forfeiture.
  - a. Cure period: The holder of the water right may cure forfeiture and revitalize the right by substantial use of the right after statutory period on nonuse, so long as no claim or proceeding of forfeiture has begun (*In Re Water of Manse Springs*, 60 Nev. 280 (1940). In the case of the *Town of Eureka v. State Engineer*, 108 Nev. 163 (1992): The State Engineer did not commit dereliction of duty by not including review of economic consideration and alternative projects as part of guidelines defining "Public Interest" for purposes of determining whether to issue water appropriation permit in connection with proposed project to import groundwater from one basin to another.
  - b. Four year letter (NRS 534.090-1): Requires State Engineer to send out a certified letter after four years of non-use to inform water right holder that after one more year water right will be forfeited. Important to remember that the State Engineer is only required to send out the letter to the last known owner and address of the water right on recorded at

the Division of Water Resources. If the water rights changed hands and a report of conveyance was never submitted to the Division of Water Resource for approval and recording, there is a strong possibility that the "Four Year Letter" will not reach the appropriate party(s).

- c. If the water right holder is able to resume beneficial use of the water, they are required to file proof of resumption of water to beneficial use with the state engineer's office in order to avoid forfeiture of the water right.

## **IX. Protecting Existing Rights**

The ability to protect existing water rights is possible through various strategies. One must be aware of their rights as holders of water rights, as well as be aware of how to maintain them in good standing.

- A. Complying with Terms of Permit** - Extensions of time, if there are any and for what periods of time.
  
- B. Monitoring Applications of others** - If one has an interest in water rights in a defined geographical area one should periodically go to the State Engineer's office and print a copy of the abstract for that area. As an alternative, you can review the monthly reports available at the State Engineer's website at: <http://water.nv.gov/IS/monthlvrpt/monthlvrpt.asp>. These reports show what applications and change applications have been filed with the State Engineer. This is a helpful tool which will allow the interested party to know what has been filed that might impact the water rights of interest.
  
- C. Filing Timely Protests when Necessary** - If one feels that the granting of an application or change application will adversely impact their rights, a protest can be filed with the State Engineer. The protest must be filed within 30 days of the end of the publication period, be placed on a form approved by the State Engineer's office and pay the required fee. The protestant will then be placed on the mailing list for the application and will receive mailings relating thereto.
  
- D. Record Keeping/Documentation** - The water rights holder must keep accurate records of diversions, photographs of crops being grown, and should also keep records of water levels. These records may be needed to document the beneficial use or to show adverse impacts caused by junior appropriators.

## **X. Buying Selling and Leasing Water Rights**

The process of buying, selling, or leasing water rights should be completely understood by the interested party prior to acting. One must be sure of buying or selling for a fair price. In the instance of leasing rights one should be aware of what rights are associated with them.

**A. Buying Rights vs. New Applications** - In some basins the only water rights available will be existing rights, the pertinent information for anyone interested in acquiring new water rights includes the following:

1. Designated Basins - State Engineer makes this designation when the resource is approaching full or over appropriation. No new applications will generally be granted in these hydrographic basins.
2. Priority - knowing what rights are senior to those that are being considered will be helpful in the evaluation of the water right.
3. Knowledge - of what is being appropriated and/or bought and its associated cost.
4. Timing - if a change of the point of use or point of diversion is required, is the required time for this process available and reasonable?

### **B. Due Diligence - Records Review**

1. Deeds/Property Description - County Recorders records must be searched. This search is conducted much like a real estate and chain of title search. It is important to remember that title insurances does not exist or is very limited for water rights.

### **C. Water Right Analysis**

1. Status of rights -The first step is to review the file maintained by the State Engineer. Each permit will contain a summary of ownership and an abstract of title. The abstracts of title show all the deeds that have been filed in the State Engineer's office. The file should also indicate whom the State Engineer considers the owner of record. Because not every deed gets filed with the State Engineer, it is critical that the records of the County Recorder be reviewed.

2. Overlapping/supplemental rights - the specific terms of all permits must be reviewed. Permits that are supplemental may have limited or no value if they are attempted to be separated from the base right.
3. Priority relative to other rights - The right with the earliest priority is most times worth more than less senior rights.
4. Problems referenced in State Engineer's files, including pumping records and field reports. If there has been a field investigation, which indicates that the right has not be used during several successive years, it is possible that it may be subject to action by the state engineer.

**D. Title Research/Chain of Title**

1. Deed analysis-who owns appurtenant rights in order to know who to contact if interested in purchasing rights, or to determine if the rights are currently being put to beneficial use.
2. Access and right-of-way issues
3. Issues relating to right being split among several owners - O & M costs, access, wells
4. Deeds of Trust and other financing issues - these issues are the same as for real property - if the rights secure a loan the purchaser must know that

**E. Report of Conveyance** -do the report(s) of conveyance on file with the State Engineer confirm what you found at the County Recorder's office?

**F. Pricing** - what is done when there is no established market for the rights? In order to assess what water rights are worth, it is necessary to research other sales of water rights in the same area to arrive at a conclusion.

**G. Role of Attorney in Process** – The role of an attorney is dependent on what the issues at hand include. If an interested party feels that the law is not being followed, or in the event that a hearing is called in to discuss water rights in question, an attorney may be retained in order to aid and assist the interested party.

## **XI. Role of Others in Managing Water Resources (Non-Water Rights Issues)**

### **A. Federal**

1. US BOR – The United States Bureau of Reclamation is often the holder of Federal Reserve Water Rights, and in the state of Nevada they operate a large portion of the state’s land.
2. Corps of Engineers-The Army Corps of Engineers has authority over the navigable waters in the United States and administers 404 permits under the Federal Clean Water Act, which allows for activities within navigable waters. The Corps also manages wetlands and can restrict activities in and around wetlands.
3. Other federal agencies- Other important Federal agencies include the Fish and Wildlife Service, the National Parks Service, and the Environmental Protection Agency. These agencies protect their own water rights as well as enforcing various Federal environmental laws.

### **B. State**

Water rights in the West are determined by State law and the person assigned to administer the water resources in the State of Nevada is the State Engineer. The Division of Water Resources (DWR) in Nevada is a division within the Department of Conservation and Natural Resources and is headed by the State Engineer. The DWR has the primary responsibility for administering water rights in Nevada.

1. Nevada Division of Environmental Protection (NDEP)- NDEP does not have authority over the quantity of water rights that are determined by the State Engineer, but does control water quality issues in Nevada.
2. Department of Wildlife- The Department of Wildlife owns water rights in the state of Nevada and manages those water rights for the benefit of wildlife. Such use is considered a beneficial use in Nevada.
3. Bureau of Safe Drinking Water - The Bureau of Safe Drinking Water is a bureau within the NDEP and has authority over the Safe Drinking Water Act in Nevada, providing it with jurisdiction over all public water systems.

- C. Local land use and zoning** - water rights dedications (dedication of water rights to a municipality)- Municipalities provide water service to their citizens through a system that includes water treatment before delivery and wastewater treatment or reuse after delivery. When new development occurs in a municipality, the developer can be required to provide a water right to the municipality, or pay for a hook-up to the municipality system, or both. New developments require a municipality to submit will serve letters to the Division of Water Resources before a tentative map will be approved for development.
- D. Indian Tribes** - Indian tribes have significant interests in water rights and often claim water rights in a manner that is senior to non-Indian water rights. However, in some instances, Indian tribes comply with State water law for the acquisition of water rights.
- E. Public/Environmental Groups** - These groups include the Sierra Club and the Audubon Society. These groups often participate in water rights decisions as protestant's before the State Engineer.

## **XII. Further Information**

Further information regarding water rights, as well as various forms, instructions and examples can be found on the Division of Water Resources at <http://water.nv.gov/> At the website it is also possible to research the holders and status of various water rights.

Below are various conversions to aid in the calculation of water quantities.

### **COMMON WATER MEASUREMENTS**

#### **VOLUMETRIC MEASUREMENTS**

1 acre foot = 325, 851 gallons  
1 million gallons = 3.0689 acre foot  
1 cubic foot = 7.48 gallons

#### **FLOW RATE MEASUREMENTS**

1 cubic foot per second (cfs) = 448.8 gallons per minute  
1 cfs = 0.6463 million gallons per day (mgd)  
1 cfs = 1.983 acre feet per day  
1 cfs = 723.8 acre feet per year  
1 cfs = 38.4 miner's inches (CO)  
40.0 miner's inches (NV, AZ, CA, OR)  
50.0 miner's inches (ID, NM, UT)

#### **MISCELLANEOUS**

1 cubic foot of water = 62.4 lbs.  
1 acre = 43, 560 square feet