

# Nevada Water Law

## *An overview*

Nevada's first water statute was enacted in 1866 and has been amended many times since then. Today, the law serves the people of Nevada by managing the state's valuable water resources in a fair and equitable manner. Nevada water law has the flexibility to accommodate new and growing uses of water in Nevada while protecting those who have used the water in the past.

Nevada water law is based on two fundamental concepts: prior appropriation and beneficial use. Prior appropriation (also known as "first in time, first in right") allows for the orderly use of the state's water resources by granting priority to senior water rights. This concept ensures the senior uses are protected, even as new uses for water are allocated.

All water may be appropriated for beneficial use as provided in Chapters [533](#) and [534](#) of the *Nevada Revised Statutes* (referred hereafter as *NRS*). Irrigation, mining, recreation, commercial/industrial and municipal uses are examples of beneficial uses, among others.

## *The Role of The State*

The Nevada Division of Water Resources is responsible for administering and enforcing Nevada water law, which includes the adjudication and appropriation of groundwater and surface water in the state. The appointed administrative head of this division is the State Engineer, whose office was created by the Nevada Legislature in 1903. The purpose of the 1903 legislation was to account for all of the existing water use according to priority. The 1903 act was amended in 1905 to set out a method for appropriation of water not already being put to a beneficial use.

It was not until the passage of the Nevada General Water Law Act of 1913 that the Nevada Division of Water Resources was granted jurisdiction over all wells tapping artesian water or water in definable underground aquifers. The 1939 Nevada Underground Water Act granted the Nevada Division of Water Resources total jurisdiction over all groundwater in the state.

The 1913 and 1939 acts have been amended a number of times, and Nevada's water law is considered one of the most comprehensive water laws in the West. The above-mentioned acts provide that all water within the boundaries of the state, whether above or beneath the surface of the the ground, belongs to the public, as referenced in [NRS 533.025](#) and is subject to appropriation for beneficial use under the laws of the state ([NRS 533.030](#) and [NRS 534.020](#)).

## *Water Permits*

### **The application process**

To acquire a water permit, an application must be made on an approved form and filed

with the State Engineer ([NRS 533.325](#)). Pursuant to Nevada water law, the application must be supported by a map prepared in a prescribed form by a water rights surveyor. The supporting map must show the point of diversion and place of use of the water within the proper legal subdivisions. No application shall be for the water of more than one source to be used for more than one purpose ([NRS 533.330](#)).

When the application and map are properly completed, a notice must be sent to a newspaper of general circulation in the area where the application was filed. This notice is published for approximately 30 days ([NRS 533.360](#)). Interested parties may file a formal protest up until 30 days after the last day of publication explaining their objections to the application and requesting denial of the application or other appropriate action by the State Engineer ([NRS 533.365](#)).

After the expiration of the protest period, the application is ready for action by the State Engineer. When considering an application for approval or denial, the State Engineer must consider the following:

Is there unappropriated water at the source?

Will the use of the water under the proposed application conflict with existing rights?

Will the use of the water under the proposed application prove detrimental to the public interest?

Will the use of the water under the proposed application adversely impact domestic wells?

In addition to these items, other criteria within [NRS 533.370](#) deal with impacts within irrigation districts, the good faith intent of the applicant to construct the works of diversion and put the water to beneficial use, and the financial ability and reasonable expectation to construct the works of diversion and put the water to beneficial use.

The State Engineer may require any additional information needed prior to approval or rejection of an application ([NRS 533.375](#)). The State Engineer also has the discretion to hold a hearing prior to any decision.

The State Engineer reviews any pertinent information and either approves or denies the application. When an application is denied, the State Engineer notifies the applicant of denial, retains the denied application for the record and will not pursue any further action under the application. The denial may be appealed in the appropriate court of jurisdiction within 30 days after the denial action ([NRS 533.450](#)). When a water permit is approved, the permit terms and limitations are specified as part of the permit. A fee is also required for any permit issued in accordance with [NRS 533.435](#). Once a permit is issued, the applicant may initiate the work to divert and use the water established as the beneficial use.

Once granted, water rights in Nevada have the standing of both real and personal property - meaning they are conveyed as an appurtenance to real property unless they are specifically excluded in the deed of conveyance. When water rights are purchased or sold as personal property or treated as a separate appurtenance in a real-estate transaction, the water rights are conveyed specifically by a deed of conveyance. It is possible to buy or sell water rights and change the water's point of diversion, manner of use and place of use

by filing the appropriate application with the State Engineer.

### ***Interbasin Transfers***

Due to the state's arid climate and limited water resources, transferring water from one basin to another is not new to Nevada. In fact, the first interbasin transfer occurred in 1873, when water from Hobart Reservoir in the Washoe Valley Hydrographic Basin was conveyed to Virginia City, which is within the Dayton Valley Hydrographic Basin. Many interbasin transfers have been completed since then in nearly every region of the state.

The chart below, adapted from the 1999 Nevada State Water Plan, shows interbasin water transfers throughout the state since 1873.

<b>Groundwater Transfers</b>		
<b>Basin of Origin</b>	<b>Receiving Basin</b>	<b>Type of Use</b>
Washoe Valley	Eagle Valley	Carson City municipal supply
Goshute Valley	Great Salt Lake Desert	Wendover municipal supply
Pilot Creek Valley	Great Salt Lake Desert	Wendover municipal supply
Long Valley	Cold Springs Valley	Municipal supply
Ralston Valley	Big Smokey Valley	Tonopah municipal supply
Carson Valley	Eagle Valley	Carson City municipal supply
Dayton Valley	Eagle Valley	Carson City municipal supply
L. Meadow Valley Wash	Muddy River Springs Area	Reid Gardner Power Plant
Oreana Sub-area	Lovelock Valley	Lovelock municipal supply

<b>Surface Water Transfers</b>		
<b>Source / Basin of Origin</b>	<b>Receiving Basin</b>	<b>Type of Use</b>
Lake Tahoe Basin	Eagle Valley	Carson City municipal supply
Lake Tahoe Basin	Dayton Valley	Virginia City municipal supply
Truckee River (Tracy Segment)	Carson River (Churchill Valley via Truckee Canal)	Truckee-Carson Irrigation District for irrigation
Newark Valley (spring)	Diamond Valley	Eureka Municipal Supply
Lake Tahoe Basin (treated effluent)	Carson Valley	Irrigation
Truckee River (Truckee Meadows)	Lemmon Valley	Municipal supply
Carson River (Dayton Valley)	Eagle Valley	Carson City municipal supply
Colorado River (Black Mountain area)	Las Vegas Valley	Las Vegas area municipal supply
Truckee River (Truckee Meadows)	Spanish Springs Valley (via Orr Ditch)	Irrigation
Truckee River (Truckee Meadows)	Sun Valley	Municipal Supply

In determining whether an application for an interbasin transfer of water should be

approved or rejected, under [NRS 533.370](#) the State Engineer must consider:

Whether the applicant has justified the need to import the water from another basin.  
Whether a conservation plan has been adopted and is being effectively carried out, if the State Engineer determines that such a plan is advisable for the basin into which water is to be imported.

Whether the proposed action is environmentally sound as it relates to the basin from which the water is exported.

Whether the proposed action is an appropriate long-term use that will not unduly limit the future growth and development in the basin from which the water is exported.

Any other factor(s) the Office of the State Engineer determines to be relevant.

The applicant may also work with the county from which the water is proposed to be transferred to develop a plan to mitigate adverse economic impacts of the transfer. If a plan cannot be agreed to, the county (with the approval of the State Engineer) has the option to impose an annual fee on the water transferred. The amount of the fee is defined in [NRS 533.438](#).

### ***Environmental Protection***

The State Engineer has the authority to require a hydrological, environmental or any other study necessary prior to final determination of an application ([NRS 533.368](#)).

### **Proof of Completion**

As one of the conditions of the permit's approval, the State Engineer requires that a Proof of Completion of the work be filed. This Proof of Completion usually must be filed within two years from the permit issuance. This affidavit provides information on the well construction and other information as requested by the State Engineer.

### **Proof of Beneficial Use**

Beneficial use is the basis, the measure and the limit of the right to the use of the water. Each water permit issued is limited to the amount that can be applied to beneficial use, not to exceed a specified diversion rate and annual duty. The Proof of Beneficial Use is usually required within five years after the approval of the permit. The Proof of Beneficial Use identifies how the property has been developed and indicates the amount of water placed to beneficial use. Once the Proof of Beneficial Use application has been filed and accepted, the water cannot be used for any additional development.

### **Extension of Time**

The State Engineer may grant an Extension of time to comply with the permit requirements such as filing the Proof of Completion or the Proof of Beneficial Use, provided due diligence and good cause are demonstrated as to why such proofs cannot be submitted as required by the terms of the permit.

### **Abandonment and Forfeiture of Rights**

Surface water rights are subject to abandonment as described in [NRS 533.060](#).

Groundwater rights, once granted by the State Engineer, are subject to abandonment and

forfeiture as described in [NRS 534.090](#). A water right holder who fails for five consecutive years to use all or any part of a water right for its acquired use runs the risk of forfeiting the water right to the extent of the non-use. In other words, the portion not used could be forfeited. However, a timely filed request for an Extension of Time may be granted by the State Engineer for good cause shown for a period not to exceed one year for any single extension.

### **Domestic Wells**

A domestic well is one well that serves one home. Domestic wells are exempt from the water-right permitting process when the pumpage does not exceed a daily maximum of 1,800 gallons ([NRS 534.180](#)) and water cannot be furnished by an entity such as a water district or municipality ([NRS 534.120](#)). The domestic well exemption is not subject to forfeiture or revocation, and a homeowner cannot be required to cease pumping as long as the domestic well is operating properly.

## **Role**