



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1981 | Issue 1

Article 73

1-1-1981

Property; Appropriation of Water, Review of Permit Cancellation, Transfer of Rights Affecting Irrigation Districts

Univeristy of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

Univeristy of the Pacific, McGeorge School of Law, *Property; Appropriation of Water, Review of Permit Cancellation, Transfer of Rights Affecting Irrigation Districts*, 1981 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1981/iss1/73>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

apply for purposes of execution to property owned by Nevada residents unless specifically made exempt by Chapter 341.¹⁷

instruments, the debtor's right to receive social security, veteran's disability, alimony, stock payment or other benefits, and the right to receive award, wrongful death, or other payments).

17. See N.R.S. §21.090 3.

Property; appropriation of water, review of permit cancellation, transfer of rights affecting irrigation districts

N.R.S. §§533.—(new); 533.355, 533.360, 533.370, 533.380, 533.390, 533.395, 533.410, 533.435, 534.160, 538.171 (amended).

AB 16 (Committee on Economic Development and Natural Resources); STATS 1981, Ch 736

AB 27 (Dini); STATS 1981, Ch 45

AB 28 (Dini); STATS 1981, Ch 186

SB 64 (Getto); STATS 1981, Ch 103

Chapters 45, 186, and 736 revise administrative procedures for water rights appropriation.¹ Chapters 45 and 736 alter provisions regarding construction deadlines and work progress statements.² Chapter 45 establishes a procedure for appeal of permit cancellations.³ Chapter 186 clarifies the procedure for the disposition of defective permit applications⁴ and the refund of publication fees,⁵ expands the grounds for rejection of permit applications,⁶ and extends the scope of sanctions for well drilling violations.⁷

Existing law provides a comprehensive administrative procedure for state control of water appropriation under the Office of the State Engineer who oversees the distribution and use of water within the state and the approval or rejection of permits to appropriate water.⁸ Chapter 186 clarifies the procedure for the disposition of defective permit applications.⁹ Existing law provides that a defective application may be corrected within sixty days without adversely affecting the applicant's

1. See N.R.S. §§533.355, 533.360, 533.370, 533.380, 533.390, 533.395, 533.410, 534.160.

2. See *id.* §§533.380, 533.390, 533.410.

3. See *id.* §533.395.

4. See *id.* §533.355.

5. See *id.* §533.360.

6. See *id.* §533.370.

7. See *id.* §534.160.

8. See *id.* §§532.010-544.240. See generally *In re Filippini*, 66 Nev. 17, 202 P.2d 535 (1949); 5 R. POWELL, THE LAW OF REAL PROPERTY §734 (P. Rohan ed. 1977).

9. See N.R.S. §533.355 1. Compare *id.* §533.355 2 with STATUTES OF NEVADA 1971, c. 131, §1, at 179.

priority date.¹⁰ Chapter 186 now provides, however, that an application may be rejected without the opportunity for correction if the application contains sufficient accurate information to enable the State Engineer to determine that the application must be rejected.¹¹

Chapter 186 clarifies the procedure for refunding fees used for the publication of notice of the application.¹² Prior law provided that the applicant deposit \$25 with the State Engineer for the cost of publishing notice of the application and that this deposit be refunded if the application was cancelled prior to publication.¹³ In addition, a \$35 application fee was collected.¹⁴ Chapter 736 increases the application fee to \$100.¹⁵ Chapter 186 also removes the deposit requirement¹⁶ and specifies that the portion of the application fee collected for publication costs must be refunded if the application is cancelled.¹⁷

Chapters 45 and 736 alter existing provisions regarding construction deadlines and work progress statements.¹⁸ Existing law provides that the State Engineer set a time not to exceed ten years from the date of approval of the application within which complete application of water to beneficial use must be made.¹⁹ Under Chapter 736, if the application is for a municipal or quasi-municipal use on any land for which a final subdivision map has been recorded pursuant to Chapter 278, the State Engineer must set a time not less than five years before which complete application of water to beneficial use must be made.²⁰ However, the holder of a permit issued for any municipal or quasi-municipal use of water may request an extension of this time period, and Chapter 736 also establishes several factors that the State Engineer must consider in evaluating the request.²¹ In addition, the State Engi-

10. N.R.S. §533.355 2. *See* Proctor v. Jennings, 6 Nev. 83, 87 (1870) (priority dates are crucial to the doctrine of appropriation which determines rights on a first-in-time, first-in-right basis); N.R.S. §533.395 3 (effective date of appropriation changes from date of permit to date of petition for review of cancellation). W. HUTCHINS, THE NEVADA LAW OF WATER RIGHTS 15-17 (1955) [hereinafter cited as HUTCHINS]; *cf. In re McGregor*, 56 Nev. 407, 418-420, 55 P.2d 10, 12-13 (1936) (the 60 day period runs from the date of the return endorsed on the defective application and not from the date of receipt by the applicant).

11. N.R.S. §533.355 3. *See id.* §533.015 (definition of State Engineer).

12. *Id.* §533.360 2. *See id.* §533.360 1.

13. STATUTES OF NEVADA 1975, c. 690, §2, at 1397 (enacting N.R.S. §533.360).

14. STATUTES OF NEVADA 1975, c. 690, §3, at 1398.

15. N.R.S. §533.435 1.

16. *Id.* §533.360 2. *Compare id.* with STATUTES OF NEVADA 1975, c. 690, §2, at 1397.

17. *See* N.R.S. §§533.360 2, 533.435 1. *See generally* [1958] OP. ATT'Y GEN. NO. 355 (March 4, 1958) (the refund is to be made to whomever the receipt for payment of the fee had been issued).

18. *See* N.R.S. §§533.380, 533.390, 533.410.

19. *Id.* §533.380 1.

20. *Id.* §533.380 4.

21. *Id.*

neer no longer is required to set a work commencement date²² or include an order for the diligent and uninterrupted prosecution of work in the approval of an application.²³ Furthermore, applicants now need file only one work progress statement thirty days on or before the date set for the completion of work.²⁴ Finally, the provision that no further proceeding may take place under a permit cancelled because of the applicant's failure to provide proof of completion of work²⁵ or proof of application to beneficial use is repealed.²⁶

Chapter 186 revises the grounds for the rejection of permit applications.²⁷ Existing law gives the State Engineer discretion to reject an application based on the public interest and economic welfare of the state if the beneficial use of the water involves the generation of energy for out-of-state use.²⁸ Furthermore, the State Engineer cannot approve an appropriation of water from the Colorado River without the prior approval of the Administrator of the Department of Energy.²⁹ In addition, an application may be denied if it tends to impair existing rights or is otherwise detrimental to the public interest.³⁰ Chapter 186 now provides that an application may be denied without publication of notice if the application concerns the waters of a basin that have been the subject of previous applications for a similar use that have been rejected.³¹ An application also may be denied if the proposed use or

22. *Id.* §533.380 1. Compare *id.* with STATUTES OF NEVADA 1967, c. 117, §10, at 193; compare N.R.S. §533.435 1 with STATUTES OF NEVADA 1975, c. 690, §3, at 1398 (fee for filing proof of commencement of work is also repealed).

23. N.R.S. §533.380 1. See *Bailey v. State*, 95 Nev. 378, 384-385, 594 P.2d 734, 738 (1979) (prior law incorporated the doctrine of diligence by setting the time for commencement of work). Compare N.R.S. §533.380 1 with §533.395 1; compare N.R.S. §533.380 1 with STATUTES OF NEVADA 1967, c. 117, §10, at 193.

24. Compare N.R.S. §533.390 1 with STATUTES OF NEVADA 1967, c. 117, §11, at 194.

25. Compare N.R.S. §533.390 2 with STATUTES OF NEVADA 1967, c. 117, §11, at 194.

26. Compare N.R.S. §533.410 with STATUTES OF NEVADA 1967, c. 117, §12, at 194. *But see* *Bailey v. State*, 95 Nev. 378, 383-386, 594 P.2d 734, 737-739 (1979) (equitable relief may be granted to a permittee whose permit is cancelled for failure to submit proof of application to beneficial use). See generally *Union Mill and Mining Co. v. Danberg*, 81 F. 73 (9th Cir. 1897), *Kent v. Smith*, 62 Nev. 30, 140 P.2d 357 (1943), *Roeder v. Stein*, 23 Nev. 92, 42 P. 867 (1896) (the beneficial use requirement has been modified judicially to conform with the policy of economic and reasonable use); HUTCHINS, *supra* note 9, at 27 (existing law does not define specifically what uses are beneficial but the requirement that the application must state the use to which the water will be put is designed to provide a basis for determining whether a beneficial use is contemplated). See also N.R.S. §533.410 (a failure to provide proof of application to beneficial use may be cured either by filing the required affidavit and map within 30 days or by applying for an extension of time to file).

27. See N.R.S. §§533.— 1, 2, 533.370 1(b), 3.

28. *Id.* §533.— 1. Compare *id.* §533.370 with STATUTES OF NEVADA 1977, c. 529, §166, at 1171.

29. N.R.S. §533.— 2.

30. *Id.* §533.370 3. See *Griffin v. Westergard*, No. 10544, slip op. at 3 (Sup. Ct. Nev. July 29, 1980), 615 P.2d 235, 237 (1980); *Kent v. Smith*, 62 Nev. 30, 39, 140 P.2d 357, 361 (1943); HUTCHINS, *supra* note 9, at 36 n.231.

31. N.R.S. §533.370 3.

change adversely affects the costs of water to other holders in, or lessens the efficiency of the delivery of water to, an irrigation district.³²

Chapter 45 institutes a procedure for an appeal of a permit cancellation³³ resulting from the failure to (1) provide a construction description statement,³⁴ (2) proceed with construction in good faith and with reasonable diligence,³⁵ or (3) provide proof of application of water to beneficial use.³⁶ The holder of the permit may file a petition with the State Engineer within sixty days requesting a review of the cancellation.³⁷ The State Engineer may, after considering the evidence, affirm, modify, or rescind the cancellation.³⁸ If the cancellation is modified or rescinded, the effective date of appropriation is changed from the date of the original permit to the date the petition for review is filed.³⁹ Chapter 45 provides for judicial review of the cancellation of the permit only after the petition for review has been filed and acted upon by the State Engineer.⁴⁰

Finally, existing law provides for the revocation of or refusal to reissue a license to drill a well if the driller failed to comply with the law or regulations governing the drilling of wells.⁴¹ Chapter 186 now imposes these sanctions if the licensed driller permits an unlicensed person to drill or perform any other work related to well-drilling unless that person works under the licensee's direction.⁴² Chapter 186 also provides that a well drilled by a person without a license must be capped either by the driller or by the State Engineer at the driller's expense.⁴³

32. *Id.* §533.370 1(b).

33. *Id.* §533.395 2, 3, 4.

34. *Id.* §533.390 1.

35. *Id.* §533.395 1.

36. *Id.* §533.410.

37. *Id.* §533.395 2.

38. *Id.*

39. *Id.* §533.395 3.

40. *Id.* §533.395 4.

41. *Id.* §534.160 3.

42. *Id.* §534.160 6. *See generally* State *ex rel.* Shamberger v. United States, 165 F. Supp. 600 (D. Nev. 1958) (underground water appropriation permit requirement does not apply to federal government).

43. N.R.S. §534.160 5.

