

PROPOSED REGULATION OF THE STATE ENGINEER

LCB File No. R170-20

December 10, 2020

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

AUTHORITY: §§1-19, NRS 532.120 and 533.080.

A REGULATION relating to water; setting forth the requirements for obtaining and renewing a certificate to be a state water right surveyor; setting forth the code of conduct for state water right surveyors; authorizing, under certain circumstances, the State Engineer to suspend or revoke the certificate of a state water right surveyor; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law: (1) requires that certain maps, surveys and measurements of water be made by a state water right surveyor; and (2) provides that no survey, map or measurement of flow of water may be approved by the State Engineer unless the survey is made by a state water right surveyor. Existing law also requires that a state water right surveyor: (1) be familiar with land surveying and mapping and the measurement of water; (2) be of good moral standing; and (3) with limited exception, be a licensed professional engineer or land surveyor who has a practical knowledge of surveying or engineering. Existing law further authorizes the State Engineer to adopt regulations: (1) setting forth additional qualifications to become certified as a state water right surveyor; and (2) governing the official acts of state water right surveyors. (NRS 533.080)

Sections 3-5 of this regulation, respectively, define the terms “applicant,” “professional engineer” and “professional land surveyor.”

Section 6 of this regulation sets forth the requirements to apply for appointment as a state water right surveyor.

Section 7 of this regulation requires an applicant for appointment as a state water right surveyor to pass an examination testing his or her knowledge of land surveying, mapping, the measurement of water and the laws of the State and regulations of the State Engineer. **Section 8** of this regulation provides that the State Engineer will not approve an application for appointment as a state water right surveyor if the applicant: (1) fails to notify the Office of the State Engineer at least 3 business days in advance that he or she cannot appear for the examination; (2) reschedules the examination more than twice; or (3) fails the examination.

Section 9 of this regulation sets forth the requirements for applying to renew a certificate of a state water right surveyor.

Section 10 of this regulation authorizes the State Engineer to refuse to renew the certificate of a state water right surveyor if the state water right surveyor is not a professional engineer or professional land surveyor, has violated certain provisions of law or is not of good moral character.

Section 11 of this regulation provides that to reinstate an expired certificate of a state water right surveyor a person must reapply for a certificate, pay a fee, pass the required examination and take a course offered by the State Engineer.

Section 12 of this regulation sets forth certain standards for a state water right surveyor in making maps and surveys and taking measurements of the flow of water.

Section 13 of this regulation requires a state water right surveyor, with limited exception, to uphold the code of conduct required for his or her license as a professional engineer or professional land surveyor, as applicable.

Section 14 of this regulation sets forth the grounds for disciplinary action against a state water right surveyor.

Section 15 of this regulation provides that the State Engineer will investigate the alleged misconduct or incompetence of a state water right surveyor.

Section 16 of this regulation requires, under certain circumstances, a state water right surveyor who is disciplined by another state, territory, the District of Columbia, a foreign country, the Federal Government or another governmental agency to notify the State Engineer in writing of such disciplinary action.

Section 17 of this regulation authorizes the State Engineer to suspend or revoke the certificate of a state water right surveyor if the state water right surveyor has engaged in an action that is grounds for disciplinary action or is incompetent.

Section 18 of this regulation provides that the certificate of a state water right surveyor that has been suspended may be reinstated under certain circumstances.

Section 19 of this regulation makes a conforming change by limiting the scope of existing definitions in chapter 533 of NAC.

Section 1. Chapter 533 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person applying to the State Engineer for appointment as a state water right surveyor.*

Sec. 4. *“Professional engineer” has the meaning ascribed to it in NRS 625.060.*

Sec. 5. *“Professional land surveyor” has the meaning ascribed to it in NRS 625.070.*

Sec. 6. *1. An applicant for appointment as a state water right surveyor must:*

(a) Be at least 18 years of age;

(b) Except as otherwise provided in subsection 9 of NRS 533.080, hold a license as a professional engineer or professional land surveyor pursuant to chapter 625 of NRS; and

(c) Submit an application for appointment pursuant to subsection 2.

2. An application for appointment as a state water right surveyor must be submitted to the Office of the State Engineer in person or by mail. The application must be:

(a) Completed and signed by the applicant on the form provided by the Office of the State Engineer.

(b) Accompanied by the fee required by NRS 533.080.

(c) Except as otherwise provided in subsection 9 of NRS 533.080, accompanied by proof that the applicant holds a current and valid license as a professional engineer or professional land surveyor pursuant to chapter 625 of NRS.

(d) Accompanied by evidence that the applicant has at least 1 year of experience in surveying or engineering acquired during the immediately preceding 5 years that demonstrates knowledge of land surveying, mapping and the measurement of water. The State Engineer will determine whether such experience is satisfactory and appropriate.

(e) Accompanied by at least three professional references attesting to the knowledge and experience of the applicant. The State Engineer will determine whether such references are satisfactory and appropriate.

3. An application for appointment as a state water right surveyor is valid for 1 year after the date of submission unless the applicant fails the examination required pursuant to section 7 of this regulation.

Sec. 7. 1. An applicant must pass a written examination consisting of questions testing the applicant's knowledge of land surveying, mapping, the measurement of water and the laws of the State and regulations of the State Engineer. The applicant must obtain a passing score of at least 80 percent on the examination.

2. If the State Engineer schedules an examination for an applicant, the State Engineer will send the applicant notice of the time and place to appear before the State Engineer for the examination. Except as otherwise provided in subsection 3, the applicant must appear before the State Engineer at that date and time.

3. If an applicant is unable to take an examination on the scheduled date, he or she must notify the Office of the State Engineer that he or she is withdrawing from the examination not less than 3 business days before the applicant is scheduled to take the examination. The applicant may request that the State Engineer reschedule the date of the examination.

4. If an applicant fails to appear for an examination and did not timely withdraw from the examination pursuant to subsection 3, the State Engineer will deny the application for appointment as a state water right surveyor. The person may submit a new application for appointment as a state water right surveyor pursuant to section 6 of this regulation. The new

application must be accompanied by the fee required by NRS 533.080. The State Engineer will not refund any fee previously paid for an application.

Sec. 8. 1. *The State Engineer will not approve an application for appointment as a state water right surveyor if the applicant:*

(a) Fails to notify the Office of the State Engineer at least 3 business days in advance of a scheduled examination that he or she cannot appear for the examination;

(b) Reschedules the examination required by section 7 of this regulation more than twice;
or

(c) Fails the examination.

2. *A person whose application for appointment as a state water right surveyor is not approved pursuant to subsection 1 may submit a new application for appointment pursuant to section 6 of this regulation. A new application must be accompanied by the fee required by NRS 533.080. The State Engineer will not refund any fee previously paid for an application.*

Sec. 9. 1. *The certificate of a state water right surveyor expires on June 30 of each year.*

2. *A state water right surveyor may renew his or her certificate by submitting an application for renewal to the Office of the State Engineer in person or by mail. The application for renewal must:*

(a) Be completed and signed by the applicant on a form provided by the State Engineer;
and

(b) Be accompanied by the fee for renewal required by NRS 533.080.

3. *Except as otherwise provided in subsection 4, in addition to the requirements set forth in subsection 2, a state water right surveyor must submit with his or her application for*

renewal for the second renewal period after the initial certification, and every second renewal period thereafter, proof that the state water right surveyor has completed the course “Nevada State Water Right Surveyor Regulations, Statutes and Forms” offered by the Office of the State Engineer.

4. The State Engineer may allow a state water right surveyor to defer completion of the course required by subsection 3 or exempt a state water right surveyor from the requirement if the state water right surveyor:

(a) Served on active duty in the Armed Forces of the United States for 120 or more consecutive days during the certification period immediately preceding the submission of the application for renewal; or

(b) Was prevented from attending the course due to a physical disability, serious illness or other extenuating circumstance.

Sec. 10. 1. *The State Engineer will review each application for renewal submitted pursuant to section 9 of this regulation in the order in which the application was received by the Office of the State Engineer. Except as otherwise provided in subsection 2, if the State Engineer determines that an application is complete, the State Engineer will renew the certificate for the period beginning on July 1 and ending on June 30 of the next year.*

2. The State Engineer may refuse to renew a certificate, refuse to renew a certificate for a specified period of time or renew a certificate with conditions deemed appropriate by the State Engineer if the State Engineer determines that the state water right surveyor:

(a) Except as otherwise provided in subsection 9 of NRS 533.080, is not a professional engineer or professional land surveyor licensed pursuant to chapter 625 of NRS;

(b) Is not of good moral character or has violated the code of conduct required of a professional engineer or professional land surveyor licensed pursuant to chapter 625 of NRS; or

(c) Has violated any provision of this chapter, chapter 534 of NAC or chapters 533 or 534 of NRS.

3. If the State Engineer determines that an applicant for renewal is not of good moral character or is not in compliance with the requirements of this chapter, chapter 534 of NAC or chapter 533 or 534 of NRS, the State Engineer will also consider in determining whether to renew a certificate pursuant to this section:

(a) The actions of the state water right surveyor as those actions pertain to his or her certificate as a state water right surveyor or any other permit issued pursuant to this chapter, chapter 534 of NAC or chapter 533 or 534 of NRS; and

(b) The actions of the state water right surveyor as those actions pertain to his or her license as a professional engineer or professional land surveyor.

Sec. 11. *To reinstate an expired certificate, a state water right surveyor must:*

1. File a new application in accordance with section 6 of this regulation and pay the application fee required by NRS 533.080;

2. Pass the examination required by section 7 of this regulation or petition the State Engineer in writing and receive approval from the State Engineer for an exemption from the requirement to pass the examination; and

3. Demonstrate that he or she has completed the course “Nevada State Water Right Surveyor Regulations, Statutes and Forms” offered by the Office of the State Engineer at least

once with the two previous renewal periods unless he or she received an exemption or deferral pursuant to section 9 of this regulation.

Sec. 12. 1. *The certificate of a state water right surveyor authorizes the state water right surveyor to make maps and surveys and take measurements of the flow of water as described in NRS 533.080.*

2. A state water right surveyor shall:

(a) Prepare maps in accordance with the rules and requirements of the State Engineer;

(b) Report a measurement of water using the standards of measurement set forth in NRS 533.065; and

(c) Perform surveys in compliance with the requirements of chapter 533 and 534 of NRS.

3. *When engaged in any work as a state water right surveyor in this State, the state water right surveyor shall comply with:*

(a) The applicable statutes and regulations set forth in this chapter and chapters 533 of NRS; and

(b) The minimum standards for the practice of professional land surveyors set forth in NAC 625.651 to 625.795, inclusive.

4. *The state water right surveyor is responsible for ensuring the work performed by the state water right surveyor or under his or her supervision complies with the requirements of this section. The failure of a state water right surveyor to comply with the standards set forth in this section may be considered by the State Engineer as evidence of gross negligence, professional incompetence or misconduct.*

Sec. 13. 1. *Except as otherwise provided in subsection 2, a person appointed by the State Engineer as a state water right surveyor shall uphold the code of conduct required for*

his or her license as a professional engineer or professional land surveyor pursuant to chapter 625 of NRS and chapter 625 of NAC, as applicable.

2. The provisions of subsection 1 do not apply to a state water right surveyor who:

(a) Is an officer or employee of the Federal Government; and

(b) Has a restricted certificate as a state water right surveyor issued pursuant to subsection 9 of NRS 533.080.

Sec. 14. *The following are grounds for disciplinary action against a state water right surveyor:*

1. The practice of fraud or deceit in obtaining or attempting to obtain or renew a certificate of appointment as a state water right surveyor, including, without limitation, cheating on the examination required by section 7 of this regulation;

2. Swearing falsely to a map or survey in violation of NRS 533.420;

3. Supplying false information to a client;

4. Any gross negligence, incompetence or misconduct in the practice of water right surveying;

5. Aiding or abetting any person in violating the provisions of this chapter, chapter 534 of NAC or chapter 533 or 534 of NRS;

6. The conviction of or entry of a plea of guilty or nolo contendere to any crime of which an essential element is dishonesty or which is directly related to the practice of a state water right surveyor;

7. Violating a provision of this chapter, chapter 534 of NAC, any other regulation adopted by the State Engineer or chapter 533 or 534 of NRS;

8. *A disciplinary action instituted 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 the same as any ground for disciplinary action set forth in this section;*

9. *Practicing as a state water right surveyor after his or her certificate has expired or been suspended or revoked or outside any conditions attached to the certificate pursuant to subsection 2 of section 10 of this regulation;*

10. *Failing to comply with an order issued by the State Engineer; or*

11. *Failing to provide information requested by the State Engineer concerning an alleged violation within 30 days after receiving the request.*

Sec. 15. 1. *Any person aggrieved by the professional misconduct or incompetence of a state water right surveyor appointed by the State Engineer may file a written complaint with the State Engineer.*

2. *After receiving a complaint pursuant to subsection 1 or on his or her own motion, the State Engineer may take disciplinary action against a state water right surveyor based on any of the grounds set forth in section 14 of this regulation. The State Engineer will investigate the alleged violation and if he or she finds that the state water right surveyor has committed the alleged violation, the State Engineer must provide written notice of the alleged violation to the state water right surveyor. The notice must:*

(a) *Be sent by registered or certified mail to the last known address of the state water right surveyor; and*

(b) *Identify the specific provision of this chapter, chapter 534 of NAC or chapter 533 or 534 of NRS that was violated.*

3. Not later than 30 days after the date on which the notice was mailed pursuant to subsection 2, the state water right surveyor may submit a written response to the notice contesting the alleged violation. Except as otherwise provided in subsection 4, if the State Engineer:

(a) Receives a written response, the State Engineer will:

(1) Dismiss the matter if the State Engineer finds that the state water right surveyor did not engage in conduct which is grounds for disciplinary action; or

(2) Schedule the matter for a disciplinary hearing.

(b) Does not receive a written response, the State Engineer will schedule the matter for a disciplinary hearing.

4. The State Engineer may attempt to settle any disciplinary matter before holding a disciplinary hearing.

Sec. 16. 1. *A state 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 must notify the State Engineer in writing of the disciplinary action not later than 30 days after the date on which the disciplinary action is imposed if at least one of the grounds for discipline is the same or substantially the same as any ground contained in section 14 of this regulation. The written notice must include, without limitation:*

(a) The grounds of the disciplinary action;

(b) The terms and effective dates of the disciplinary action; and

(c) Whether the disciplinary action is final or under appeal.

2. The failure to provide written notice as required by this section is an aggravating factor in any disciplinary action taken by the State Engineer against the state water right surveyor.

Sec. 17. 1. The State Engineer may suspend or revoke the certificate of a state water right surveyor if the State Engineer determines after an investigation and disciplinary hearing that the state water right surveyor:

(a) Has engaged in conduct that is grounds for disciplinary action pursuant to section 14 of this regulation; or

(b) Is incompetent as a state water right surveyor.

2. If the State Engineer suspends or revokes the certificate of a state water right surveyor, the State Engineer will notify the state water right surveyor that his or her certificate has been suspended or revoked and he or she is prohibited from engaging in any activity which requires appointment as a state water right surveyor unless the certificate is reinstated pursuant to subsection 3 or section 18 of this regulation.

3. To reinstate a certificate that has been revoked pursuant to this section, a state water right surveyor must appeal the decision of the State Engineer pursuant to NRS 533.450.

Sec. 18. A state water right surveyor whose certificate has been suspended pursuant to section 17 of this regulation may have the certificate reinstated if the State Engineer finds that the state water right surveyor is competent to engage in the practice of water right surveying in this State and the state water right surveyor:

1. Complies with any order issued by the State Engineer as a result of a disciplinary action or settlement reached prior to a disciplinary action;

2. Submits a new application and fee pursuant to section 6 of this regulation;

3. Passes the examination required by section 7 of this regulation; and

4. Resolves any outstanding complaints related to his or her certificate as a state water right surveyor to the satisfaction of the State Engineer.

Sec. 19. 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.