

CHAPTER 533

ADJUDICATION OF VESTED WATER RIGHTS;
APPROPRIATION OF PUBLIC WATERS

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GENERAL PROVISIONS

NAC 533.010 Scope; construction; deviation from requirements. (NRS 532.120, 533.365)

1. The provisions of this chapter:

(a) Govern the practice and procedure of hearings before the State Engineer on protests against applications to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right under NRS 533.365.

(b) Are intended to be liberally construed to secure the just, speedy and economical determination of all issues presented to the State Engineer.

2. Where strict compliance is found to be impracticable or unnecessary, and affected persons are given notice of any procedural changes, the State Engineer may permit deviation from the provisions of this chapter.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.020 Definitions. As used in this chapter, 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.

(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.030 "Applicant" defined. "Applicant" means a person seeking to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right by filing an appropriate application with the State Engineer.

(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.050 "Party" defined. "Party" means an applicant or protestant.

(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.060 "Person presenting public comment" defined. (NRS 532.120, 533.365) "Person presenting public comment" means a person attending the hearing and expressing:

1. General support or opposition regarding a particular project proposal, application, protest to an application or comment on the facts already in evidence or on any related public policy; or

2. An opinion regarding the adequacy of environmental documents relating to the hydrologic effects of a project presented for consideration to the State Engineer.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.070 "Protest hearing" defined. "Protest hearing" means a hearing before the State Engineer on a protest against an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right.

(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.080 "Protestant" defined. (NRS 532.120, 533.365, 533.370) "Protestant" means a person filing a protest pursuant to NRS 533.365 with the Office of the State Engineer against an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right, or a successor in interest to a protestant as set forth in NRS 533.370.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.090 "State Engineer" defined. "State Engineer" has the meaning ascribed to it in NRS 533.015 and, for the purposes of this chapter, includes a person designated by the State Engineer to preside over a protest hearing.

(Added to NAC by St. Engineer, eff. 2-8-95)

**PRACTICE AND PROCEDURE IN PROTEST
HEARINGS BEFORE STATE ENGINEER**

NAC 533.110 Public comment. (NRS 532.120, 533.365)

1. A person presenting public comment:
 - (a) Will not be sworn in or otherwise asked to affirm the truth of his or her testimony; and
 - (b) Shall not attempt to move facts into evidence during his or her testimony.
2. The State Engineer may limit the time allowed for public comment.
(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.120 Authority of person designated to preside over hearing to make final ruling. (NRS 532.120, 533.365) If the State Engineer designates a person to preside over a protest hearing, the person may, if authorized in writing by the State Engineer, make the final ruling in the matter.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.130 Pleadings: Forms for filing protest.

1. The forms for filing a protest are available upon request and furnished without charge by the State Engineer.
2. A protestant need not use the filing form furnished by the State Engineer but the filing must be in substantially the same form and contain the same information as that requested in the form furnished by the State Engineer.
(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.140 Pleadings: Answers. (NRS 532.120, 533.365)

1. An applicant may, within 45 days after service of a notice of protest, file an answer to a protest filed against his or her application.
2. A copy of the answer must be served personally or by mail upon the protestant who filed the protest to which the answer responds concurrently with the filing of the answer with the Office of the State Engineer.
(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.141 Pleadings: Amendment or correction. (NRS 532.120, 533.365) The State Engineer may allow a pleading to be amended or corrected. The State Engineer may disregard any defect or error in a pleading which does not affect any substantial right of a party. A protest may be amended within the statutory period for protests.

(Added to NAC by St. Engineer by R129-08, eff. 2-11-2009)

NAC 533.142 Motions: Procedure; contents; responses; replies. (NRS 532.120, 533.365)

1. A party requesting an order by the State Engineer concerning a matter subject to a protest hearing must title the request as a "motion" and:
 - (a) If made during a hearing, submit the motion:
 - (1) In writing; or
 - (2) Orally, within the time specified by the State Engineer; or
 - (b) If it is not made during a hearing, submit the motion in writing before the hearing in accordance with subsection 5.
2. Each motion must include a citation to any authority upon which the motion relies.
3. Each written motion must be filed with the Office of the State Engineer and served concurrently upon all parties of record personally or by mail.
4. The State Engineer may direct that any motion made at a hearing must be reduced to writing and filed and served in accordance with this section and NAC 533.143.

5. A written motion, other than one made during a hearing, must be filed with the Office of the State Engineer and served not later than 30 days before the date set for hearing, unless a different time is specified by the State Engineer.

6. Any party against whom a motion is directed may file a response to the motion. The response must be in writing, unless the motion was made orally during the hearing.

7. A response to a written motion must be filed with the Office of the State Engineer and served concurrently not later than 10 days after the service of the motion.

8. The party presenting the motion may file a written reply to the response, which must be filed with the Office of the State Engineer and served concurrently not later than 10 days after the service of the response.

9. Two copies of any motion, response or reply must be timely filed with the Office of the State Engineer.

10. A motion, response or reply filed pursuant to this section must include a certificate that sets forth proof of service, the method of service and the date of service.

(Added to NAC by St. Engineer by R129-08, eff. 2-11-2009)

NAC 533.143 Pleadings or other documents: Service; computation of time for filing or serving. (NRS 532.120, 533.365)

1. Any pleading or other document filed in a protest hearing must be served on each party or his or her attorney or other agent on the date the pleading or document is filed with the Office of the State Engineer. Service of the pleading or document:

(a) Shall be deemed complete on the date of mailing or personal service.

(b) Upon the attorney or agent shall be deemed service upon the party.

2. In computing any period prescribed for filing or serving a motion, response or reply pursuant to this chapter, the first day on which any act occurs that causes the period to run is not counted and the last day of the period is counted. If the last day is a Saturday, Sunday or legal holiday, the motion, response or reply may be filed or served on the next day which is not a Saturday, Sunday or legal holiday.

(Added to NAC by St. Engineer by R129-08, eff. 2-11-2009)

NAC 533.144 Pleadings or other documents: Date on which considered filed; unacceptable methods of filing. (NRS 532.120, 533.365) Any pleading or other document filed with the Office of the State Engineer will be considered filed on the date the signed original of the pleading or document is actually received in the Office of the State Engineer. The State Engineer will not accept filings of such pleadings or documents that are submitted electronically or by facsimile machine.

(Added to NAC by St. Engineer by R129-08, eff. 2-11-2009)

NAC 533.150 Withdrawal of protest: Procedure; stipulation regarding application or related protest. (NRS 532.120, 533.365)

1. A protestant may withdraw his or her protest by filing with the Office of the State Engineer a written request for withdrawal of the protest.

2. The applicant and any protestant may enter into a stipulation regarding the application or related protest. When signed and filed with the Office of the State Engineer, such a stipulation may be treated as a withdrawal of the protest. The filing of such a stipulation does not:

(a) Make the State Engineer a party to the agreement;

(b) Establish a water right not previously acquired pursuant to law; or

(c) Bind the State Engineer or any other protestant not a party to the stipulation.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.160 Prehearing discovery. (NRS 532.120, 533.365) Prehearing discovery is not a matter of right, but may be conducted in compliance with a stipulation between the parties or upon order of the State Engineer.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.170 Prehearing conferences. (NRS 532.120, 533.365)

1. The State Engineer may, upon 15 days' notice to the parties, hold a prehearing conference to:

- (a) Formulate or simplify the issues involved in the proceeding;
- (b) Obtain admissions of fact or stipulations of the parties;
- (c) Determine the nature and extent of the issues to be determined at the hearing or obtain documents necessary to consider those issues at the hearing;
- (d) Identify the witnesses and the subject matter of their expected testimony and limit the number of witnesses, if necessary;
- (e) Rule on any motions;
- (f) Arrange for the exchange of:
 - (1) Proposed exhibits;
 - (2) Prepared testimony of experts;
 - (3) Lists of witnesses;
 - (4) Lists of exhibits; or
 - (5) Other materials the State Engineer deems to be relevant and necessary to understand the issues;
- (g) Limit the time and scope of the examination of witnesses;
- (h) Establish an order of proceedings for the hearing which is most suitable to the particular case, including the order in which parties will present their respective cases; and
- (i) Discuss and resolve other matters which may promote orderly conduct, expedite the hearings or achieve a settlement of the issues between the parties of record.

2. Unless otherwise ordered for good cause shown, the failure of a party to attend a prehearing conference constitutes a waiver of any objection to the rulings made at the prehearing conference. If the absent party does not provide notice before the prehearing conference that the absent party intends to participate in the hearing, the State Engineer may proceed to consider and dispose of the matter without the participation of the absent party.

3. The rulings, action taken or agreements made at a prehearing conference:

- (a) Will be made a part of the record;
- (b) Control the course of subsequent proceedings unless modified by the State Engineer; and
- (c) Are binding upon all parties.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.180 Hearings: Objective. (NRS 532.120, 533.365) The objective of a protest hearing is to develop a record upon which the State Engineer may rely to make a sound decision, without causing unnecessary delay and expense to participating parties or to the Office of the State Engineer.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.190 Hearings: Location; conduct of persons. (NRS 532.120, 533.365)

1. Protest hearings will be held at the time and place designated by the notice of hearing.
2. Each party to a protest hearing, the counsel or other agent of the party and any spectators shall conduct themselves in a respectful manner during the hearing. If a person conducts himself or herself in a disrespectful or inappropriate manner, the State Engineer may expel him or her from the hearing.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.200 Hearings: Right to representation by attorney; role of attorney.

1. A party in a protest hearing may be represented by an attorney or other agent.
2. An attorney representing a party in a protest hearing must be an active member of the State Bar of Nevada or associated with an active member of the State Bar of Nevada.

3. An attorney or other agent representing a party will be recognized as fully controlling the case on behalf of the party.

4. Following the entry of an appearance by an attorney or other agent for a party, all notices, documents and orders thereafter served must be served upon the attorney or agent. Service on the attorney or agent constitutes, for all purposes, valid service upon the party represented.

(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.210 Hearings: Permissible issues. (NRS 532.120, 533.365)

1. Issues to be considered during a hearing will be determined from the contents of the application and any protests or as modified by the State Engineer.

2. The State Engineer may define or limit the issues to be considered.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.220 Hearings: Reporting by court reporter; availability and costs of transcripts.

1. The State Engineer will ensure that proceedings at hearings are reported by a certified court reporter.

2. The original and one copy of the transcript of the proceedings must be filed with the State Engineer.

3. The applicant and the protestant shall bear equally the fees of the court reporter for:

(a) The appearance of the court reporter;

(b) The travel expenses of the court reporter; and

(c) Reporting and transcribing the portion of the transcript consisting of comments by the State Engineer and the public.

4. The applicant and the protestant shall bear pro rata, based on the percentage of the transcript taken up by their own case, the fees of the court reporter for reporting and transcribing the portion of the transcript taken up by the applicant's and the protestant's case.

5. Any person may obtain a copy of a transcript prepared under this section by requesting such a copy from the Office of the State Engineer or the court reporter and upon payment of the actual cost of obtaining the copy from the court reporter.

(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.230 Hearings: Identification of witnesses. (NRS 532.120, 533.365) Before the hearing, the State Engineer may require the parties to identify the persons intending to offer direct testimony at the hearing. If a party fails to comply with a prehearing order to identify a witness, the State Engineer may refuse to allow that witness to testify.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.240 Hearings: Testimony under oath or affirmation; panels; examination and cross-examination of witnesses. (NRS 532.120, 533.365)

1. All testimony of witnesses appearing on behalf of a party must be given under oath or affirmation. For the purposes of this section, public commentary is not considered to be testimony.

2. Unless otherwise ordered by the State Engineer, a witness may give his or her testimony as his or her own narrative or the attorney or agent of the witness may direct his or her testimony.

3. Unless otherwise ordered by the State Engineer, witnesses may testify as a panel when appropriate.

4. The applicant may cross-examine a protestant's witness and a protestant may cross-examine the applicant's witness. A protestant may not cross-examine another protestant's witness.

5. All witnesses may be examined by the State Engineer and the staff of the State Engineer.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.250 Hearings: Written testimony. (NRS 532.120, 533.365)

1. When the particular facts of an application and protest indicate that many witnesses will appear at the hearing or that a considerable amount of technical testimony will be necessary, the State Engineer may require parties and witnesses to submit their testimony in written form before the hearing date.

2. If written testimony is submitted, the witness shall also appear at the hearing to:

(a) Affirm that his or her written testimony is true and correct and that he or she personally prepared it or directed its preparation; and

(b) Submit to cross-examination.

3. Written testimony will not be read into the record, but must be entered into evidence as an exhibit. The State Engineer may, however, require a witness who has submitted written testimony to summarize it at the hearing.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.260 Hearings: Admission of evidence. (NRS 532.120, 533.365)

1. All evidence offered in a hearing, including the testimony of a witness, must be relevant to the subject matter of the proceeding.

2. The State Engineer may exclude testimony that is irrelevant, incompetent or unduly repetitious by:

(a) Requesting a party to cease his or her line of examination or narrative; or

(b) Refusing to consider the testimony when making his or her final determination.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.265 Hearings: Rebuttal evidence. (NRS 532.120, 533.365) If the State Engineer authorizes rebuttal evidence, the party may offer in its rebuttal only evidence that directly explains, counteracts or disproves facts offered into evidence by other parties of record.

(Added to NAC by St. Engineer by R129-08, eff. 2-11-2009)

NAC 533.280 Hearings: Identification and exchange of exhibits. (NRS 532.120, 533.365)

1. The State Engineer may require in advance of the hearing:

(a) Identification of each exhibit that a party intends to use; and

(b) Exchange of exhibits between certain designated parties.

2. If a party fails to comply with a prehearing order to identify or exchange exhibits, the State Engineer may refuse to accept the exhibit into evidence.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.290 Hearings: Admissibility and form of exhibits. (NRS 532.120, 533.365)

1. Exhibits that will be introduced as evidence must be:

(a) In a readily reproducible form; and

(b) On paper that is 8 1/2 by 11 inches or that may be folded to that size, unless otherwise specified by the State Engineer.

2. Larger charts, maps, drawings or other materials will not be introduced into evidence but may be used for demonstrative purposes.

3. An original and one copy of each exhibit that is offered into evidence must be submitted to the State Engineer.

4. If any evidence is included in a written or printed statement, book or other document that contains any other material not relevant and not intended to be admitted into evidence, an excerpt from the statement, book or other document may be submitted. If a party or the State Engineer requests a complete copy of the statement, book or other document, the party submitting the excerpt shall provide the complete copy in a timely manner to the person requesting the copy.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.300 Hearings: Administrative notice. (NRS 532.120, 533.365) The State Engineer may take administrative notice of or accept into evidence by reference to their contents:

1. Files and records of the Office of the State Engineer;
 2. Public records that have been prepared by other governmental agencies;
 3. Facts of which judicial notice may be taken by the courts of this state; and
 4. Technical or scientific data that:
 - (a) Have been generally accepted by the relevant scientific community; and
 - (b) Are within the field of expertise of the Office of the State Engineer.
- (Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.310 Hearings: Stipulations.

1. With the approval of the State Engineer, the parties may stipulate to any fact in issue, either by a written stipulation introduced into evidence as an exhibit or by an oral statement entered in the record.
2. Such a stipulation is binding only upon the parties to the stipulation and is not binding on the State Engineer.
3. The State Engineer may require proof by independent evidence of the stipulated facts.
(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.320 Hearings: Continuances.

1. A party may request that the State Engineer continue a protest hearing to a later date by submitting a request for continuance to the State Engineer at least 5 working days before the date set for the hearing.
2. The State Engineer will notify the other parties of any request for continuance and accept any responses to the request by the other parties.
3. After considering the request and any responses, the State Engineer may grant or deny the request.
4. The State Engineer may reset a hearing which has previously been continued only if he or she gives at least 15 days' notice to all parties.
(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.330 Hearings: Failure to appear. (NRS 532.120, 533.365) If a hearing is held and a party fails to appear at the time and place set for the hearing without prior notification to the State Engineer, the State Engineer will hear the evidence of the witnesses who have appeared and will proceed to consider the matter and dispose of it on the basis of the evidence presented.
(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.340 Hearings: Consolidation.

1. The State Engineer may consolidate two or more proceedings if it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by the consolidation.
2. The State Engineer will determine the order in which the parties introduce their evidence and the general procedure to be followed during the course of a consolidated hearing.
3. The State Engineer will apportion the costs of a consolidated hearing among the parties responsible for the costs.
(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.350 Hearings: Order of proceedings. (NRS 532.120, 533.365) The State Engineer has full discretion in each case to determine the order in which the parties introduce their evidence and the general procedure to be followed during the course of each protest hearing. The presentation will ordinarily be in the following order:

1. The State Engineer will call the proceeding to order and announce the matter to be heard.
2. The State Engineer will inquire as to whether the parties are represented by counsel or other agent.

3. The State Engineer will offer the exhibits of the State Engineer into evidence. Any party may then object to that evidence.

4. The State Engineer may offer the parties the opportunity to make opening statements which briefly summarize what their proposed testimony and exhibits are intended to establish. Opening statements must not contain evidence.

5. The parties shall present their cases in chief in the order established by the State Engineer, including:

(a) Testimony, either by the narrative of each party or the witness of each party or by direct examination conducted by each party's attorney or agent;

(b) Cross-examination;

(c) Redirect examination; and

(d) Recross-examination.

↳ The same order of examination will be followed for each witness.

6. The State Engineer or his or her staff may question any witnesses during their testimony.

7. After all testimony and comments have been received on behalf of the applicant and protestant, the State Engineer will admit into evidence, subject to objection and ruling, any remaining exhibits that have not already been admitted during the course of the hearing. The State Engineer may rule on the admissibility of a challenged exhibit after hearing arguments or may take the objections under submission and announce the ruling on admissibility as part of the final decision.

8. The State Engineer may allow closing statements that briefly summarize the points respectively made during the hearing.

9. Public comment will be taken at the end of each hearing. If warranted, the State Engineer may vary the time for taking public comment or require that public comment be submitted in writing. The State Engineer may limit the time each person is allowed to comment.

10. The State Engineer may require the submission of legal briefs. If the State Engineer orders the filing of briefs, he or she will indicate which subjects must be addressed in the briefs and the schedule for their submission. Briefs ordered under this subsection must be filed with the Office of the State Engineer and must be accompanied by an acknowledgment or an affidavit showing service on the other party.

11. Unless the State Engineer orders otherwise, the State Engineer will close the record of the hearing, take the matter under submission and rule as provided in chapters 533 and 534 of NRS.

(Added to NAC by St. Engineer, eff. 2-8-95; A by R129-08, 2-11-2009)

NAC 533.360 Hearings: Additional evidence. At any time during the protest hearing, the State Engineer may order the presentation of further evidence on any issue. The State Engineer may authorize any party to file within a fixed time after the hearing additional specific documentary evidence to become part of the record.

(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.365 Hearings: Petitions for reconsideration or rehearing not accepted. (NRS 532.120, 533.365) Petitions for reconsideration or rehearing will not be accepted.

(Added to NAC by St. Engineer by R129-08, eff. 2-11-2009)

NAC 533.370 Hearings: Interim order. At any time during the protest hearing process, the State Engineer may issue an appropriate interim order.

(Added to NAC by St. Engineer, eff. 2-8-95)

NAC 533.380 Petition to adopt, amend or repeal regulation on practice and procedure of protest hearing.

1. If a person desires to petition the State Engineer, pursuant to NRS 233B.100, to adopt, amend or repeal a regulation regarding the practice and procedure of protest hearings, he or she must submit such a petition in writing and include a statement of the petitioner's interest, the

nature of the request, the reasons for the request, relevant data, argument for the request and such other matters as the petitioner believes may be helpful to the State Engineer in determining the proper action to take in the matter. The petition must be signed by or on behalf of the petitioner and filed in the Office of the State Engineer.

2. If a petition requests the adoption of a proposed regulation, it must also include the full text of the proposed regulation.

3. If a petition requests the amendment or repeal of an existing regulation, it must also include a copy of the regulation or that portion of the regulation in question and the suggested amendment.

(Added to NAC by St. Engineer, eff. 2-8-95)