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1990

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Nevada State Office
P.O. Box 12000
Reno, Nevada 89520-0006

In reply refer to:
7250 (NV-931.9)

January 17, 1990

Instruction Memorandum No. NV-90- 145
Expires: 9/30/91

To: District Managers, Nevada
Deputy State Directors and Staff Chiefs, NSO

From: State Director, Nevada

Subject: Water Rights Procedures for the State of Nevada DD: 10/15/90

Over the past few years much has happened with water rights in Nevada. A number of memorandums were issued that have expired. Some had information that is still pertinent, others are obsolete. This memorandum is intended to consolidate all currently pertinent water rights direction in Nevada into one memorandum and a few references.

The argument about the legality of Federal agencies being granted water rights in Nevada has been resolved. The Nevada Supreme Court determined in December 1988 that Federal agencies had the right to file for water appropriated rights in the State of Nevada in the same manner as any individual. Federal agencies were neither to be treated preferentially nor discriminated against. Specific beneficial uses that were identified as legitimate uses in that determination included livestock, wildlife and recreation (including fish). The Court also found that the diversion of water from its source was not a criterion of water appropriation.

Increasing water demand in the State has accelerated the need for adjudications. These accelerated adjudications have increased BLM's needs for water rights processing. The processing of water rights claims requires a good understanding of our water rights needs.

The BLM water rights objective in Nevada is to develop adequate water to serve the needs of beneficial uses under our multiple use management. We are required to accomplish this objective through notifying the State Engineer of our needed Public Water Reserves (PWRs) and appropriating other waters through the Nevada Revised Statutes (NRS) for water law of the State of Nevada. The process includes the following four (4) steps:

1. Identify our needs for Multiple Use Management.
2. Separate the beneficial uses related to PWRs from those related to state water appropriation.
3. Notify the State Engineer of the PWRs that meet our needs.
4. Apply for State appropriated water rights for the needs that weren't satisfied through PWR notifications.

The key to developing water rights for our multiple use management is in understanding the needs of the management uses. Districts will be requested to assist the NSO in developing a formula to quantify multiple use needs of water. The goal is to complete the task in the early spring of 1990.

POLICY

The Bureau manual is specific. "The water policy of the BLM is that the States have the primary authority and responsibility for the allocation and management of the water resources in their own boundaries, except as otherwise specified by Congress on a case-by-case basis."

The manual further states that BLM personnel will implement water rights policy by: 1) "cooperating with the State governments under the umbrella of State law to protect water uses identified for public land management purposes," and 2) "to comply with applicable State law, except as specifically mandated by Congress, to appropriate water necessary to manage public lands for the purpose intended by Congress." The management purposes intended by Congress as defined by the Federal Land Policy and Management Act (FLPMA) include "multiple use" (section 102(a)8) which is defined as "... the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." The uses associated with multiple use are also described in the same definition, (section 103(c)) as follows "... a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and non-renewable resources, including but not limited to, recreation, range, minerals, watershed, wildlife and fish" The Wild Horse and Burro Act, FLPMA, and the National Environmental Policy Act also recognize free wild horses and burros as resource uses which are included in BLM management responsibility.

Our objective for the non-reserved waters is, therefore, to acquire water rights in the name of the United States which are needed for the multiple use management activities. Needed water is defined as an adequate amount of water to supply all beneficial uses under BLM jurisdiction including: livestock, wildlife, wild horses and burros, recreation, domestic and for other public uses. Supply sources will be acquired to insure availability of water for public benefits. PWR-107 procedures will be used to acquire adequate waters

for human and animal use. Where adequate needed supplies are not acquired through PWR procedures, applications to the State Water Engineer will be made for appropriated waters to fulfill those needs.

In addition to the State Water Law, five (5) documents provide guidance in accomplishing the policy above. They are as follows and are included in the Appendix.

1. The BLM Manual on 7250 - Water Rights.
2. Solicitor Krulitz's opinion #M-36914, June 25, 1979.
3. Solicitor Coldiron's modification of Solicitor Krulitz's opinion.
4. The State of Nevada Revised Statutes (NRS Chapters 533 & 534).
5. The December 21, 1988 Nevada Supreme Court Decision, #18105.

Copies of the Nevada Revised Statutes (NRS Chapter 534) will be mailed to each District Office as soon as we receive them from the State Engineer.

PROCEDURES

Bureau Manual 7250 is current and is the cornerstone of the water rights procedures. It references two (2) Solicitors' opinions: 1) Krulitz #M-36914 of June 25, 1979, and 2) a modification of the Krulitz #M-36914 by Solicitor Coldiron on February 16, 1983. Understanding these three (3) documents is essential to knowing the Washington Office perspective on Federal water rights. Both Solicitors' opinions and the Manual describe the imperativeness of State Law. Chapter 533 of the NRS is the Nevada State Law that deals with surface waters. Chapter 534 deals with ground waters. The 7250 Manual, the two Solicitors' opinions and the two chapters in the State Law, provide an adequate amount of information to deal with nearly all of the water rights problems that the Nevada BLM offices have. Most of the Nevada BLM water rights workload will occur in the area of two (2) types of water rights: stockwater rights under appropriative water rights involving Nevada State Law, Manual #7250.11 A 1 and PWR-107 under Federal Reserved Water Rights Manual #7250.12 A 2. The following outline describes the location of information needed to process water right notification for PWRs and water rights applications for State water appropriations. It also discusses some of the common field questions that are raised in the implementation of these water rights assertions.

PUBLIC WATER RESERVES (PWR-107)

Identification — See Appendix 6 (PWR-107) Checklist. This screening process for PWR 107 was developed by the BLM Solicitor in 1984.

Notification — See PWR notification form. There is no application process with the PWR-107. BLM rights for public water reserves under PWR-107 were established through an Executive Order in 1926. After going through the identification process above and recognizing the management need of the water, we notify the State Engineer that we have identified the location and use of waters that were set aside for BLM management use in 1926. This notification will save conflict and protests of other parties. The form for this process is found in Appendix 7a.

Master Title Plat Identification — Provide the Lands and Withdrawal Review Section at the Nevada State Office with a copy of all PWRs that are sent to the State Engineer for notification so they can be identified on the Master Title Plats.

Change Place of Use — When the PWR is to be used off the designated 40 acre reserve, the same procedures used for appropriated water rights that are used away from the spring source are followed. (See NRS 533.345 and 533.435 and Appendix 7e.)

Fee — See NRS 533.135. Note: The NSO will receive any NRS changes, from the State Engineer, soon after the State Legislature recesses. Administrative procedures or fee changes that affect the BLM will be circulated to the Districts. All fees are paid from the benefitting activity funds and not from 8100 funds.

Maps — 7.5 minute Topographical Quadrangle on mylar with water source location, bearing and distance from source to known U.S.G.S. control station. All stream courses within 1/4 mile of the spring source must be identified. See the example map documentation in Appendix 8.

Beneficial Uses — Human and animal use only.

Volume — 1800 gallons/day (GPD) is the water volume that the State Engineer has tentatively used as a cut-off for the amount of water necessary to fit the requirements of a PWR. (See Solicitor David Lindgren's memo of August 23, 1985 and Solicitor Lynn Cox's memo of August 7, 1985, and Nevada State Water Engineer's Order of Determination for the Meadow Valley Adjudication, May 18, 1989, Page 8, item 4.)

The quantity of water reserved from a particular source has been described by the State Water Engineer as the minimum quantity required to prevent monopolization of the land and water source to meet the primary purpose of the reservation. In the absence of Federal direction, that minimum amount of water has been established by the State Engineer to be 1800 GPD. Any source not capable of producing at least 1800 gallons per day does not operate as a PWR-107 source. The State Engineer, according to the adjudication specialist for the State Engineer's Office, said that the 1800 GPD figure was taken from NRS 534.180, which describes the amount of water that need not be considered in the State permitting process for domestic use from wells.

According to the State Engineer's Office, the opportunity is still available to define the minimum amount of water that we should consider in a PWR-107.

We should continue to identify and submit notifications to the State Engineer for needed spring source waters regardless of the flow rate. In FY 1990 we will develop a formula of how much water we need for livestock management.

Other Reserved Water Rights — In addition to PWR-107, the BLM Manual 7250.2A lists six (6) other public water reservations. Four (4) of these have been repealed by FLPMA. The two (2) that remain are the Wilderness Act provisions and the Wild and Scenic Rivers Act provisions. All of the previous public water reserves made before FLPMA still apply unless they were changed through the provisions in the Act.

Developing PWRs — Development of PWRs can begin following BLM notification to the State Engineer. PWRs that were developed before notification should be included in the notification process.

APPROPRIATED WATERS

Application For a Permit to Appropriate Water — (See Application Form, Appendix 7b, and NRS 533.325-.335.)

Change of Place of Diversion or Manner of Use or Place of Use — (See NRS 533.345 and 533.435 and Appendix 7e.)

Fees — (See NRS 533.435.) All fees are paid from funds of the benefitting activity.

Maps — See NRS 533.350 and the 1977 State Engineer's publication on "Regulations Concerning Preparation of Maps Under Applications to Appropriate Water and Proofs of Appropriation."

Notification — A monthly listing of new water rights applications filed throughout the State is received at the Nevada State Office. This list is mailed to the District Offices within one day after receiving it. In addition, a public notice is published by the State Engineer's Office in a newspaper of general circulation in the County where water is sought to be appropriated within 30 days of an individual filing of the application for a water permit. It is published for four (4) consecutive weeks. (See NRS 533.360.)

Beneficial Uses — Livestock, wild horses and burros, wildlife, recreation, domestic, and other public beneficial uses.

Proof of Completion of Work and of Beneficial Use — In his endorsement of approval of any application, the State Engineer shall set a time that the development work must be completed and also a time that the water will be

applied to beneficial use (NRS 533.380). Extensions may be requested for either of these times. Within the time set for completion of work, a detailed description of work completed must be filed with the State Engineer (NRS 533.390). Within the time set for water application to beneficial use, described in the approval of the application, a form describing the beneficial use must be filed with the State Engineer's Office (NRS 533.400 and Appendix 7c). Fees for filing "Proof of Completion of Work" and "Proof of Beneficial Use" and extensions of times for either are included in NRS 533.435 and Appendix 7f.

Development of Non-reserved Stock Waters Using Public Funding — It is the obligation of the BLM to protect the investment of public funds for any range improvement. Development of non-reserved waters with the use of public funds requires: 1) that any development of non-reserved waters, if partially funded with public funds, must have the water use permit from the State Engineer with at least 1/2 interest in the name of the Federal Government, 2) if the project is totally funded with public funds, the water use permit must be totally in the name of the Federal Government, and 3) public funds may be committed to the water development project only after the State Engineer has issued the permit with the appropriate designated ownership indicated, which includes the U.S. Government, as noted above.

Water Base Property Considerations — Water flowing from a base water source may exceed that needed to support the preference assigned to the service area. In such cases, the water that exceeds the amount necessary to maintain the preference is available for appropriation from the State Engineer, just like water from any other source that exceeds the supply of the given beneficial use. Where the BLM has need for water for other beneficial uses (other than the livestock) from that source, the excess water needed for the other uses may be appropriated with no jeopardy to the preference assigned to the base water.

The assignment of water base property and the associated service areas were completed during the initial adjudication of preference in the 1960s. BLM policy is that there would be no new water based preference established. Neither would there be any public funds expended for the development, maintenance or reconstruction of base waters or their facilities.

Ensure that Wildlife has Access to Water — The State Engineer requires that springs that have traditionally provided water to wildlife will continue to provide water for that purpose. (See NRS 533.367.)

VESTED RIGHTS — Manual 7250.11A-1 (a sub-set of appropriative water rights) states that, "Some State laws recognize a 'vested water right' in water sources that were put to beneficial use prior to a certain date (usually the date that the State enacted a general water rights statute.)" The State of Nevada enacted a water rights statute in 1905. It is the date before which vested rights are recognized for surface waters. March 22, 1913 is the date

that is recognized for artesian waters and March 22, 1939 for percolating waters. "The BLM generally may not claim appropriative water rights in the name of the United States with the priority predating the time that Congress directed that the public lands be maintained and managed for specific use, e.g., 1934 for livestock watering under the Taylor Grazing Act or 1976 for wildlife watering under the FLPMA." Since the 1905 and 1913 dates above predate the Taylor Grazing Act, the BLM in Nevada has no claim to vested rights for surface or artesian waters. The only exception to this rule is where we have acquired land through purchase or exchange that had a claim to vested water rights and the water rights were transferred with the land.

RIPARIAN WATER RIGHTS — There are no "Riparian Water Rights" in the State of Nevada.

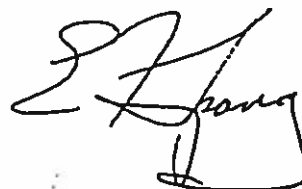
ANCILLARY INFORMATION

Adjudication — Water rights adjudication is a process where the courts decide the reasonable and legal amount of water allocation for each of the applicants from the available sources. It is, therefore, incumbent on the District Managers to have defined the appropriate needs for the multiple use management well before the adjudication and to have notified the State Engineer of both our PWR needs and our appropriated water rights needs. The McCarran Amendment Manual 7250.22A allows the BLM to be joined in adjudication including PWRs.

District Water Rights Applications Filing System — Each water right application will be a case file which is filed in numerical sequence. The application numbers are assigned by the State Engineer. These application numbers will be the continuing record reference throughout the history of the case. When the conditions have been met to receive a permit, the State Engineer will assign the same number to the granted permit that was originally assigned to the application but it will be known thereafter as the permit number. When a request is submitted to modify the permit, you will refer to the permit number. All correspondence will reference the permit number even after a certificate has been issued. The certificate will have a different assigned number than the permit. The State Engineer will reference, in such cases, both the permit number and the certificate number. This procedure is done so that he can trace the case history in his files or ours. The case files, after the issuance of the certificate, will still be filed under the permit or the application number. Copies of the application permit and certificate will also be retained in the range improvement project file. Pursuant file records will be maintained at each District Office per the description above.

Protests — The Protest procedure in State Law is sometimes the only available vehicle to protect BLM water needs. Protest should be made only on applications that currently or potentially interfere with our management needs or where the applicant has no BLM authorization to use public land or public water. Protests may be submitted to the State Engineer's Office within 30 days after the last publication notice of application. (See NRS 533.365.)

Please provide comments by 10/15/90 to Jim McLaughlin (NV-931.9) regarding the adequacy and comprehensive nature of this document.



3 Attachments

- 1 - Appendices 1 - 6 (201 pp)
- 2 - Appendices 7a - 7f (12 pp)
- 3 - Appendix 8 (3 pp)

Distribution

Director (222) - 1 Premier Bldg., Room 909 (w/o attach)
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