

## CHAPTER 536 - DITCHES, CANALS, FLUMES AND OTHER CONDUITS

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### REGULATION OF DITCHES AND CANALS BY STATE ENGINEER

#### **NRS 536.010 Construction and maintenance of headgates, measuring devices and flumes.**

1. The owner or owners of any ditch or canal shall maintain to the satisfaction of the State Engineer a substantial headgate at or near the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water commissioner.

2. Such owners shall construct and maintain, when required by the State Engineer, suitable measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water commissioner in determining the amount of water that is to be diverted into the ditch from the stream, or taken from it by the various users.

3. Every owner or manager of a reservoir located across or upon the bed of a natural stream or of a reservoir which requires the use of a natural stream channel shall be required to construct and maintain, when required by the State Engineer, a measuring device of a plan to be approved by the State Engineer, below such reservoir, and a measuring device above such reservoir, on every stream or source of supply discharging into such reservoir, for the purpose of assisting the State Engineer or water commissioners in determining the amount of water to which appropriators are entitled and thereafter diverting it for such appropriators' use.

4. When it may be necessary for the protection of other water users, the State Engineer may require flumes to be installed along the line of any ditch.

**NRS 536.020 Refusal to construct headgates, flumes or measuring devices: State Engineer may close ditch or open sluice gate or outlet of reservoir.**

1. If any owner or owners of irrigation works shall refuse or neglect to construct and put in such headgates, flumes or measuring devices as provided for in [NRS 536.010](#) after 10 days' notice, the State Engineer may close such ditch, and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the state engineer as to such headgate, flume or measuring device have been complied with.

2. If any owner or manager of a reservoir, which reservoir requires the use of a natural stream channel, shall neglect or refuse to put in such measuring device after 10 days' notice by the state engineer, the state engineer may open the sluice gate or outlet of such reservoir and the same shall not be closed, under the penalties of the law for changing or interfering with headgates, until the requirements of the State Engineer as to such measuring device are complied with.

**NRS 536.030 Installation of headgates, measuring devices or flumes by State Engineer; procedure for payment of expenses.** If any person neglects or refuses to install the headgate, measuring device or flume, as required by [NRS 536.010](#), the State Engineer may, in the discretion of the State Engineer, install the headgate, measuring device or flume, as the case may be, and in the first instance charge the actual cost thereof to the water distribution account and thereafter present an itemized statement of the charge to the board of county commissioners of the county wherein the charge and expenses were incurred. The board of county commissioners shall thereupon present a bill for the expenses to the person liable therefor under this section and [NRS 536.010](#) and [536.020](#), and if that person neglects for 30 days thereafter to pay it, the bill and costs become a lien upon the lands and property of the person so liable for the payment of the bill, and must be collected as delinquent taxes against the lands and property are collected.

**EXPENSES OF MAINTENANCE AND OPERATION OF DITCHES**

**NRS 536.040 Contribution of owners or recipients of water for proportionate share of work.**

1. In all cases where a ditch is owned by two or more persons, and one or more of those persons fails or neglects to do a proportionate share of the work necessary for the maintenance and operation of the ditch, or to construct suitable headgates or other devices at the point where water is diverted from the main ditch, the owner or owners desiring the performance of the work may, after giving 10 days' written notice to the other owner or owners who have failed to perform the proportionate share of the work necessary for the operation and maintenance of the ditch, perform the share of the work, and recover therefor from each person in default the reasonable expense of the work. In all cases where a ditch is owned, operated or maintained by an entity, the entity may perform any work necessary for the maintenance and operation of the ditch and recover from each person who, in accordance with a contract or a decreed, certified or permitted right to appropriate water, receives water through the ditch his or her proportionate share of the reasonable expense of the work. Except during an emergency, the entity shall notify each of those persons at least 30 days before incurring any expenses to perform a capital improvement that alters the fundamental character of the ditch. If the entity is a supplier of water, any expenses incurred by the supplier of water for any work performed on an irrigation ditch pursuant to this section must be billed as part of the customer rates of the supplier of water for the delivery of water service through the ditch.

2. As used in this section:

(a) "Supplier of water" has the meaning ascribed to it in [NRS 445A.845](#).

(b) "Work" includes, without limitation, labor and any accounting, legal or other administrative service performed for the maintenance and operation of a ditch specified in subsection 1.

**NRS 536.050 Statement of expenses constitutes valid lien against property of defaulting co-owner or recipient of water.**

Upon the failure of any co-owner or person who receives water through a ditch from an entity specified in [NRS 536.040](#) to pay his or her proportionate share of such expense, as specified in that section, within 30 days after receiving a statement of the same as performed by his or her co-owner or co-owners or by the entity owning, operating or maintaining the ditch, each person or entity so performing the labor or other work may secure payment of the claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor or other work so performed, with the county clerk of the county wherein the ditch is situated, and when so filed it constitutes a valid lien against the interest of each person in default and against any property to which water is delivered through the ditch. The lien may be established and enforced in the same manner as provided by law for the enforcement of mechanics' liens.

**RIGHTS-OF-WAY FOR DITCHES AND FLUMES**

**NRS 536.060 Construction of ditch or flume: Execution and recording of certificate; commencement and completion of work.**

1. Any person or persons desiring to construct and maintain a ditch or flume within any one or more of the counties of this state shall make, sign and acknowledge, before a person entitled to take acknowledgments of deeds, a certificate, specifying:

(a) The name by which the ditch or flume shall be known; and

(b) The names of the places which shall constitute the termini of such ditch or flume.

2. Such certificate shall be accompanied with a plat of the proposed ditch or flume, and shall be recorded in the office of the county recorder of the county or counties within or through which such ditch or flume is proposed to be located. The record of such certificate and plat shall give constructive notice to all persons of the matters therein contained.

3. The work of constructing such ditch or flume shall be commenced within 30 days of the time of making the certificate above mentioned, and shall be continued with all reasonable dispatch until completed.

**NRS 536.070 Examination and survey of private land; condemnation; appeal from findings of appraiser.**

1. Any person or persons proposing to construct a ditch or flume under the provisions of [NRS 536.060](#) to [536.090](#), inclusive, shall have the right to enter upon private lands for the purpose of examining and surveying the same.

2. Where such lands cannot be obtained by the consent of the owner or owners thereof, so much of the same as may be necessary for the construction of the ditch or flume may be appropriated by such person or persons after making compensation therefor, as follows. Such person or persons shall select one appraiser, and the owner or owners shall select one, and the two so selected shall select a third. In case the owner or owners shall from any cause fail, for the period of 5 days, to select an appraiser as herein provided, then the appraiser selected by the person or persons proposing to construct the ditch or flume shall select a second appraiser, and the two so selected shall select a third. In either case the three selected shall, within 5 days after their selection, meet and appraise the lands sought to be appropriated, after having been first duly sworn by a person entitled to administer oaths, to make a true appraisalment thereof, according to the best of their knowledge and ability.

3. If such person or persons shall tender to such owner or owners the appraised value of such land, they shall be entitled to proceed in the construction of the ditch or flume over the lands so appraised, notwithstanding such tender may be refused; but such tender shall always be kept good by such person or persons.

4. An appeal may be taken by either party from the findings of the appraisers to the district court of the county within which the lands so appraised shall be situated, at any time within 10 days after such appraisalment.

[2:100:1866; A 1869, 129; B § 3853; BH § 363; C § 426; RL § 4711; NCL § 7998]

**NRS 536.080 Right of person or entity constructing, operating or maintaining ditch or flume; prior or existing claim or right not interfered with.** Each person or entity constructing, operating or maintaining a ditch or flume under the provisions of [NRS 536.060](#) to [536.090](#), inclusive, has the undisturbed right and privilege of flowing water through the same, to the full extent of its capacity, for mining, milling, manufacturing, agricultural and other domestic purposes, whether for use by the person or entity or for delivery to others, and to use the same at any necessary and convenient point or points along the line thereof, but nothing contained in [NRS 536.060](#) to [536.090](#), inclusive, shall be so construed as to interfere with any prior or existing claim or right.

[3:100:1866; A 1889, 96; C § 427; RL § 4712; NCL § 7999] — (NRS A [2009, 703](#))

**NRS 536.090 Applicability of [NRS 536.060](#) to [536.090](#), inclusive.** [NRS 536.060](#) to [536.090](#), inclusive, shall apply, and the rights and privileges therein conferred shall inure, to the benefit of all persons or corporations who have, prior to March 3, 1866, constructed, and now maintain, ditches, flumes or aqueducts in this state, from whatever source they may have procured water, such persons or corporations being required to make and file the certificate mentioned in [NRS 536.060](#), and upon such filing, the person or persons filing the same shall be authorized, from time to time, to extend the ditch or flume, and proceed to condemn private property for such ditch or flume, or for any reservoir or reservoirs connected, or to be used in connection, with such ditch or flume, as provided in [NRS 536.070](#).

[4:100:1866; B § 3855; BH § 365; C § 428; RL § 4713; NCL § 8000]

## RIGHTS-OF-WAY FOR WASTE DITCHES AND FLUMES

### **NRS 536.100 Examination and survey of private land; appropriation of land.**

1. Any person or persons who have constructed or who may construct any ditch or flume for the purpose of diverting the water of any river or stream in and on to their lands for the purpose of irrigating and cultivating the same, or who own or control or may own and control any such ditch or flume, and who have no natural or artificial ditch or way for conveying off any or all surplus water from such lands shall have the right to enter upon private lands for the purpose of examining and surveying the same for the purpose of constructing and maintaining a waste ditch and the necessary flumes connected therewith.

2. When such lands cannot be obtained by the consent of the owner or owners thereof, so much of the same as may be necessary for the construction of the waste ditch and flumes may be appropriated therefor in the same manner as is provided for the appropriation of lands of others in [NRS 536.060](#) to [536.090](#), inclusive.

[1:80:1887; C § 429; RL § 4714; NCL § 8001]

## USE OF STATE LAND

**NRS 536.105 Chapter does not authorize use of state land without authorization from State Land Registrar.** Nothing in this chapter authorizes a person to use any state land administered by the Division of State Lands of the State Department of Conservation and Natural Resources without the appropriate authorization for such a use from the State Land Registrar.

(Added to NRS by [1993, 1460](#))

## UNLAWFUL DAMAGE TO DITCHES AND FLUMES

**NRS 536.115 Investigation of complaint of unlawful removal, damage or destruction of ditch by State Engineer; reports concerning investigation.**

1. In a county whose population is less than 100,000, the State Engineer shall, upon request of the owner of a ditch or a local governmental entity in whose jurisdiction a ditch is located, investigate a complaint involving a possible violation of the provisions of [NRS 536.120](#) which involves the ditch if the ditch is located:

(a) Within the boundaries of an adjudicated stream system for which the State Engineer has appointed an engineer to work in a supervisory capacity pursuant to [NRS 533.275](#); and

(b) Outside the boundaries of an irrigation district organized pursuant to [chapter 539](#) of NRS.

2. For any complaint investigated pursuant to subsection 1, the State Engineer shall:

(a) Prepare a report concerning the investigation, including, without limitation, the condition of the ditch; and

(b) Make the report available to the person or local governmental entity that requested the investigation.

3. A person or local governmental entity that obtains a report pursuant to subsection 2 may submit a copy of the report with any report of a violation of the provisions of [NRS 536.120](#) that is reported to a law enforcement agency.

(Added to NRS by [2003, 973](#))

**NRS 536.120 Penalty.** Every person who shall willfully and maliciously remove, damage or destroy a ditch or flume lawfully erected for carrying water or draining land shall be guilty of a misdemeanor.

[Part 1911 C&P § 487; RL § 6752; NCL § 10434]

## ADMINISTRATIVE PENALTIES AND ENFORCEMENT

**NRS 536.200 Penalties for violation of chapter, order or regulation.**

1. In addition to any other penalty provided by law, the State Engineer may, after notice and opportunity for a hearing, require a person who violates any provision of this chapter, any order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to [NRS 532.120](#) to pay an administrative fine not to exceed \$10,000 per day for each violation as determined by the State Engineer.

2. If an administrative fine is imposed against a person pursuant to subsection 1, the State Engineer may require the person to pay the costs of the proceeding, including investigative costs and attorney's fees.

3. An order imposing an administrative fine or requiring the payment of costs or fees pursuant to this section may be reviewed by a district court pursuant to [NRS 533.450](#).

(Added to NRS by [2007, 2022](#))

**NRS 536.210 Injunctive and other relief.**

1. The State Engineer may seek injunctive relief in the appropriate court to prevent the continuance or occurrence of any act or practice which violates any provision of this chapter, any order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to [NRS 532.120](#).

2. On a showing by the State Engineer that a person is engaged, or is about to engage, in any act or practice which violates or will violate any provision of this chapter, any order or decision issued by the State Engineer pursuant to this chapter or any regulation adopted by the State Engineer pursuant to [NRS 532.120](#), the court may issue, without a bond, any prohibitory or mandatory injunction that the facts may warrant, including a temporary restraining order issued ex parte or, after notice and hearing, a preliminary or permanent injunction.

3. Failure to establish lack of an adequate remedy at law or irreparable harm is not a ground for denying a request for a temporary restraining order or injunction.

4. The court may require the posting of a sufficient performance bond or other security to ensure compliance with the court order within the period prescribed.

5. Any proceeding conducted or injunction or order issued pursuant to this section is in addition to, and not in lieu of, any other penalty or remedy available for a violation of this chapter.

(Added to NRS by [2007, 2022](#))