

TMWA Subcommittee Members:

- Chair Kristopher Dahir
- Vice Chair Naomi Duerr
- Alexis Hill
- Alternate Paul Anderson
- Alternate Jenny Brekhus

**Legislative Subcommittee of the Truckee Meadows Water Authority (TMWA)****AGENDA**

Monday October 18, 2021 @ 8:30 a.m.

Meeting Via Teleconference Only

MEMBERS OF THE PUBLIC MAY ATTEND VIA THE WEB LINK, OR
TELEPHONICALLY BY CALLING THE NUMBER, LISTED BELOW.
NO PHYSICAL LOCATION IS BEING PROVIDED FOR THIS MEETING
(be sure to keep your phones on mute, and do not place the call on hold)

Please click the link below to join the webinar:

<https://tmwa.zoom.us/j/82651499904?pwd=djJyQkVsbmh4cWRSb24zc2lSNHBYQT09>

Passcode: 724259

Or call:

Phone: (888) 788-0099

Webinar ID: 826 5149 9904

Notes:

1. Pursuant to NRS 241.020(11), this meeting will be held by teleconference only.
2. The announcement of this meeting has been electronically posted in compliance with NRS 241.020(3) at <http://www.tmwa.com>, and NRS 232.2175 at <https://notice.nv.gov/>.
3. Pursuant to NRS 241.020(3) staff reports and supporting material for the meeting are available on the TMWA website at <http://www.tmwa.com/meeting/> or you can contact Sonia Folsom at (775) 834-8002. Supporting material is made available to the general public in accordance with NRS 241.020(6).
4. The Committee may elect to combine agenda items, consider agenda items out of order, remove agenda items, or delay discussion on agenda items. Arrive at the meeting at the posted time to hear item(s) of interest.
5. Asterisks (*) denote non-action items.
6. Live public comment, whether on action items or general public comment, may be made during the meeting by clicking on the "Reactions" icon at the bottom of your screen and selecting the "raise hand icon and unmuting yourself to speak when your name is called. Or if you are calling in, press *9 to "raise your hand" and *6 to unmute your phone when your name is called. Public comment may also be provided without being physically present at the meeting by submitting written comments online on TMWA's Public Comment Form (tmwa.com/PublicComment) or by email sent to boardclerk@tmwa.com prior to the Subcommittee opening the public comment period during the meeting. In addition, public comments may be provided by leaving a voicemail at (775)834-0255 prior to 4:00 p.m. the day before the scheduled meeting. Voicemail messages received will be noted during the meeting and summarized for entry into the record. Public comment is limited to three minutes and is allowed during the public comment periods. The Subcommittee may elect to receive public comment only during the two public comment periods rather than each action item.
7. Notice is hereby given that a quorum of the Truckee Meadows Water Authority (TMWA) and/or Western Regional Water Commission (WRWC) may be present at the meeting in so much as some members of the TMWA legislative subcommittee and WRWC legislative subcommittee are members of the TMWA Board of Directors and WRWC. Although members constituting a quorum of the TMWA Board and/or WRWC may be in attendance at the meeting while serving in different capacities as representative members of different governing bodies (TMWA and WRWC), no deliberations or actions on any matter over which TMWA or WRWC has supervision or control will be taken within the definition of a "meeting" under NRS 241.015 by persons constituting a quorum of the TMWA Board and/or WRWC and acting in their capacity as members of the TMWA Board and/or WRWC. This notice is provided in excess of caution given the potential of a quorum to be present at this meeting.

1. Roll call*
2. Public comment (limited to no more than three minutes per speaker)*
3. Approval of agenda (**For Possible Action**)
4. Approval of the TMWA Legislative Subcommittee minutes of May 17, 2021 (**For Possible Action**)

5. Discussion, action and possible direction to staff on activities of Joint Special Committee to Conduct a Study Concerning Innovation Zones (SCR 11) and TMWA participation in same **(For Possible Action)**
6. Discussion, action and possible direction to staff on activities of Nevada Supreme Court Commission to Study the Adjudication of Water and TMWA participation in same **(For Possible Action)**
7. Discussion, action and possible direction to staff on Proposed Regulations of the State Engineer concerning hearings, meetings and practice and procedure, and applications for extension of time and TMWA participation in same **(For Possible Action)**
8. Discussion, action and possible direction to staff on Proposed Regulations of Nevada Division of Environmental Protection on Antidegradation and ecological and aesthetic waters and TMWA participation in same **(For Possible Action)**
9. Discussion, action and possible direction to staff on efforts to secure state or federal funding for studying or developing groundwater resources through active and/or passive recharge and effluent reuse projects **(For Possible Action)**
10. Committee comments*
11. Staff comments*
12. Public comment (limited to no more than three minutes per speaker)*
13. Adjournment **(For Possible Action)**

**DRAFT MINUTES OF THE MAY 17, 2021
MEETING OF THE LEGISLATIVE SUBCOMMITTEE OF
THE TRUCKEE MEADOWS WATER AUTHORITY**

The meeting of the Legislative Subcommittee of the Truckee Meadows Water Authority (TMWA) was held via Teleconference. Chair Dahir called the meeting to order at 9:03 a.m.

1. ROLL CALL

TMWA Subcommittee Members Present: Kristopher Dahir, Naomi Duerr and Alexis Hill, and Alternate Paul Anderson

TMWA Legal Counsel: Michael Pagni

TMWA Staff Present: Mark Foree, Laura Rader, John Zimmerman, and Leo Drozdoff (TMWA Lobbyist)

A quorum of the TMWA Legislative Subcommittee was present.

2. PUBLIC COMMENT

There was no public comment.

3. APPROVAL OF THE AGENDA

Upon motion duly made by Member Duerr and seconded by Member Hill, and carried unanimously, the TMWA Subcommittee approved the agenda.

4. APPROVAL OF THE TMWA & WRWC LEGISLATIVE SUBCOMMITTEE MINUTES OF APRIL 30, 2021.

Upon motion duly made by Member Hill and seconded by Member Duerr, and carried unanimously, the TMWA Subcommittee approved the minutes of April 30, 2021 meeting.

5. PRESENTATION OF STATUS REPORT ON LEGISLATION OF INTEREST TO TMWA AND POSSIBLE DIRECTION REGARDING TMWA'S POSITION ON LEGISLATION

John Zimmerman, TMWA Water Resources Manager, and Michael Pagni, TMWA General Counsel, updated the TMWA Legislative Subcommittee on SCR11, which proposes to create a special committee (made up of both members of the Assembly and Senate) to evaluate innovation zones. It proposes the creation of a joint special committee (made up of three members each from Assembly and Senate) required to meet at least once a month to study the potential community and economic benefits and impacts (economic development, affordable housing, regional water supplies, natural resources, environmental impacts on local and county governments as well as state and local revenues). The special committee is charged with soliciting input from interested stakeholders, including local and tribal governments, environmental and labor organizations, water authorities, and local interests. Any

recommendations must be approved by a majority of the Assembly and Senate members on the committee and must submit a report and recommendations by Dec 31, 2021. Mr. Pagni added the resolution is very broad in the charge and there is no specific direction to the joint committee and input from TMWA will be important as it progresses. Staff recommends continuing to communicate with the bill sponsors and Blockchains, LLC to stay informed.

At this time Subcommittee Members discussed the importance of setting up an interim legislative subcommittee to stay ahead of discussions as SCR11 moves forward; to ensure TMWA is prepared to address the topic of handling water with respect to innovation zones and for TMWA staff to provide expertise on its impact, both positive and negative, to the region; continue monitoring resources and staying engaged with stakeholders, including Pyramid Lake Paiute Tribe; and look forward to see how the study unfolds.

Mr. Zimmerman thanked the Subcommittee for the discussion and will bring the interim legislative subcommittee item at the June Board meeting for recommendation. Mr. Drozdoff stated regarding, AB146 (to address various requirements to control water pollution), staff continues to stay engaged to work with regional agencies in southern Nevada continue to have questions and concerns so they reached out to TMWA and they all spoke to NDEP who has agreed to, which is not part of the bill, in addition to going through regulatory workshops on any of the programs, they would also agree to hold a hearing on any such regulation. Member Duerr suggested that Mr. Drozdoff recommend that there be an outreach effort to the rural areas to address their concerns, especially related to wellhead issues. Mr. Drozdoff said he would relay the message.

Mr. Pagni updated the Subcommittee on AB87 (proposes to streamline the process by which certain easements of cities and counties can be vacated and abandoned without a hearing) and said staff had requested language be added to the bill to limit easements to federal and local governments, which has passed with language amendments included; recommend changing position from oppose to monitor.

No action taken.

6. COMMITTEE COMMENTS

There were no committee comments.

7. STAFF COMMENTS

There were no staff comments.

8. PUBLIC COMMENT

There was no public comment.

9.. ADJOURNMENT

With no further business, to discuss, Chair Dahir adjourned the meeting at 9:29 a.m.

Approved by the Legislative Subcommittee of the Truckee Meadows Water Authority on _____.

Submitted by,

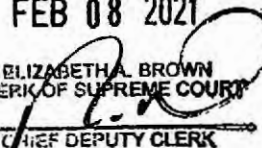
Sonia Folsom, Recording Clerk

DRAFT

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION TO STUDY THE
ADJUDICATION OF WATER LAW
CASES.

PETITION

ADKT 576
FILED
FEB 08 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

James W. Hardesty, Chief Justice of the Nevada Supreme Court, petitions the Nevada Supreme Court on its administrative docket to consider the creation of a Commission to Study the Adjudication of Water Law Cases in Nevada's Courts. In support of the petition, Chief Justice Hardesty alleges that:

1. Nevada Revised Statutes 533.025 declares that "[t]he water of all sources of water supply within the boundaries of the State whether above or beneath the surface of the ground, belongs to the public." NRS Chapter 533 generally provides for the appropriation of public waters and the adjudication of vested water rights.

2. As a part of Chapter 533, NRS 533.160-.200 provides the district court with the authority to enter a decree affirming or modifying the order of the State Engineer that makes a determination of rights to water of a stream or stream system. Such orders are subject to appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution.

3. Further, NRS 533.450 provides for judicial review of certain State Engineer decisions in the district court. Appeals of district court judgments may be taken “to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution” NRS 533.450(9).

4. Water law is a unique and complex area of the law and judicial review of water cases frequently involves, among other matters, an assessment of lengthy records, geologic and hydrologic concepts, conflicting expert testimony, and years of relevant Nevada history. And just as frequently, water cases take years to adjudicate, which adversely delays water law decisions in our state.

5. Since November 20, 2020, petitioner has collaborated with administrators and staff from the Department of Conservation and Natural Resources and the Acting State Engineer concerning studies and approaches in other states to adjudicate water law cases. Attached to the Petition as Exhibit “A” is a “Summary of Water Courts in the western United States” prepared for petitioner by Micheline N. Fairbank, Esq., Deputy Administrator of the Division of Water Resources. As the Summary shows, four of the sixteen western states surveyed have implemented some form of specialized water court, including three states by rules adopted by their supreme court. The fourth state, Colorado, provides for the appointment of water judges and staff by its supreme court, and all of the states that have implemented water courts have provided for specialized education and training for judges to serve on water cases. While the state has not implemented specialty water courts, such courts were recommended in 2002 in a multi-branch Water Disputes Task Force in Washington.

6. Based on the forgoing, petitioner believes that a study by the Nevada Supreme Court is warranted to improve the education, training, specialization, timeliness, and efficiency of Nevada's district courts in the judicial review of water cases. Further, the proposed Commission should consider the authority of the Chief Justice under Section 19 of Article 6 of the Nevada Constitution and NRS 3.040 to designate duly trained district judges to serve on water cases throughout Nevada.

7. With input from the State Engineer, petitioner believes that the Commission membership should include representatives from the following groups, entities, and industries:

a. Department of Conservation and Natural Resources/
Division of Water Resources;

b. Practicing Water Rights Engineer/Hydrologist: involved in a wide range of projects and industries throughout Nevada;

c. Practicing Water Rights Attorney: involved in a wide range of projects and industries throughout Nevada;

d. Urban Municipal Water Purveyors: representing approximately 80% of the Nevada population

1. Southern Nevada Water Authority;

2. Truckee Meadows Water Authority;

e. Rural Water Interests

1. Central Nevada Regional Water Authority;

2. Humboldt River Basin Water Authority;

f. Agriculture: representing the largest water users in Nevada

1. Nevada Farm Bureau;

2. County Farm Bureau;

g. Irrigation District;

h. Mining: representing potentially the most poorly understood water users who generally provide the largest economic value per volume of water consumed;

i. Environmental/non-government organizations

1. The Nature Conservancy;
2. Nevada Conservation League;
3. Great Basin Water Network;

j. District Court Judges;

k. Rural Nevada Counties

1. Eureka County Natural Resources;
2. Nye County Water District;
3. Lincoln County Water District;

l. Urban Nevada Counties;

1. Clark County;
2. Washoe County;
3. Carson City.

8. The Department of Conservation and Natural Resources and the acting State Engineer support this study and have agreed to provide staff support to the Commission for the purpose of scheduling meetings, maintaining minutes, keeping records of all documents considered, and conducting such research as may be requested by the Commission.

Accordingly, petitioner requests that the Nevada Supreme Court place this Petition on its administrative docket and, following a public hearing thereon, approve the creation of the Commission to Study the Adjudication of Water Law Cases, authorize the Chief Justice to appoint the members of the Commission, conduct all hearings in public, post all meeting minutes and documents considered by the Commission on the Supreme

Court's website, and require the Commission to provide its report and recommendations no later than September 30, 2021.


_____, C.J.
Hardesty

EXHIBIT “A”



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

TO: Chief Justice James Hardesty
Nevada Supreme Court

FROM: Micheline N. Fairbank, Esq.
Deputy Administrator

DATE: January 28, 2021

RE: Summary of Water Courts in the western United States

Per your request, the Division of Water Resources has conducted preliminary research relating to water courts throughout the western United States and how various states resolve disputes over the administration of water. Each of the identified states apply either the prior appropriation doctrine or some adaptation of the prior appropriation doctrine in the management of the respective state's water resources.

<i>State</i>	Judicial Review Procedures & Process
<i>Alaska</i>	Alaska has not established a specialized water court. Judicial review of challenges to decisions by the Alaska Department of Natural Resources are performed by the state Superior Courts.
<i>Arizona</i>	Arizona has not established a specialized water court. Judicial review of challenges to decisions by the Arizona Department of Water Resources and adjudications of water rights are performed by the state Superior Courts.
<i>California</i>	California has not established a specialized water court. Judicial review of challenges to decisions of the Water Resources Control Board and adjudication of water rights in California are performed by the state Superior Courts.

<i>Colorado</i>	<p>"The Water Right Determination and Administration Act of 1969 (the "1969 Act") created seven water divisions based upon the drainage patterns of various rivers in Colorado. Each water division is staffed with a division engineer appointed by the state engineer, a water judge appointed by the Supreme Court, a water referee appointed by the water judge, and a water clerk assigned by the district court.</p> <p>Water judges are district judges appointed by the Supreme Court and have jurisdiction in the determination of water rights, the use and administration of water, and all other water matters within the water division.</p> <p>Water matters are generally commenced in a water court by the filing of an application with the water clerk. The water clerk publishes a summary of each application that is filed in the monthly water court "resume" and in a legal notice in one or more newspapers. Interested persons may then file statements of opposition to an application within the time allowed by statute. Because claims in water rights adjudications may affect, in priority or otherwise, any water right claimed or previously adjudicated within each division, owners of affected rights must appear to object and protest as provided in the 1969 Act or be barred from claiming injury to their water rights as a result of claims made in an application. The monthly resume published by each water court can be viewed on that court's website.</p> <p>All water courts operate under a standard case definition approved by the Supreme Court in 1981. This made possible the establishment of water court filings standards, which have been reported annually by water division since July 1, 1981."</p> <p><i>Source:</i> Colorado Judicial Branch website, https://www.courts.state.co.us/Courts/Water/Index.cfm</p>
<i>Idaho</i>	<p>With the initiating of Idaho's Snake River Basin Adjudication in 1987, a specialty district court was established to preside over the more than 150,000 claims which included approximately two-thirds of Idaho's irrigated agricultural lands as well as thousands of reserved water right claims by tribal nations and the federal government. With the conclusion of the Snake River Basin Adjudication in 2014, the water court continues to hear water</p>

	<p>related appeals from the State Engineer and Water Board and is addressing smaller adjudications throughout Idaho.</p> <p><i>Source:</i> John E. Thorson, <i>A Permanent Water Court Proposal for a Post-general Stream Adjudication World</i>, 52 Idaho L. Rev. 17 (2016), accessible at https://www.uidaho.edu/-/media/UIIdaho-Responsive/Files/law/law-review/articles/volume-52/52-1-thorson-john-e.pdf?la=en&hash=5D10FECDF62BAB0B14A0856FAC47549DDF8FB3B.</p> <p>The Adjudication Court is comprised of a presiding judge and two special masters. While the court was established for a limited basis, the court is seemingly ongoing. Additionally, there does not appear to be any formal legislative or other act that has established the court as a permanent, rather than temporary, court.</p>
<i>Kansas</i>	<p>Kansas has not established a specialized water court. Judicial review of challenges to decisions by the Kansas Division of Water resources are performed by the state District Courts.</p>
<i>Montana</i>	<p>The 1979 Legislature created the Montana Water Court to expedite and facilitate the statewide adjudication of over 219,000 state law-based water rights and Indian and Federal reserved water rights claims. The Water Court has exclusive jurisdiction over the adjudication of water rights claims.</p> <p>The Chief Justice of the Montana Supreme Court appoints a Chief Water Judge and Associate Water Judge from a list of nominees submitted by the Judicial Nomination Commission. A division water judge is also designated for each of Montana's four major water divisions. The Chief Water Judge appoints Special Masters, referred to as Water Masters, to assist the water judges. <i>Source:</i> https://courts.mt.gov/courts/water</p> <p>In 2017, the Montana Legislature passed Senate Bill 28 (SB 28) that expanded the jurisdiction of the Montana Water Court to allow persons aggrieved by a Department of Natural Resources and Conservation's decision relating to new water right permits and changes to existing water right permits. SB 28 now allows for a litigant to choose between either bringing their dispute before the district court (the proper venue prior to the adoption of SB 28) or</p>

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Summary of Water Courts in the western United States

January 28, 2021

	the Water Court, which was historically limited to addressing the statewide adjudication.
<i>Nebraska</i>	Nebraska has not established a specialized water court. Judicial review of challenges to decisions by the Nebraska Department of Natural Resources are performed by the state District Courts.
<i>New Mexico</i>	New Mexico has not established a specific or specialized state water court. Several years ago, the New Mexico Supreme Court initiated a study committee to review how adjudications were being conducted in other states. As a result of that process, the New Mexico Supreme Court, through court rule, established a single judge to handle state adjudications. It appears that through that study committee, it was also recommended that each of the state district courts appoint a sitting judge to serve as a "water judge" to handle all administrative appeals from the State Engineer. These judges have their standard court docket in addition to serving as the district's water judge. Each of the water judges in New Mexico are required to participate in annual training specific to their water dockets. Unfortunately, the New Mexico court rules relating to the creation of the adjudication judge and water judge positions is not available online; however, the Division is working to obtain copies of the relevant order(s).
<i>North Dakota</i>	North Dakota has not established a specialized water court. Judicial review of challenges to decisions by the North Dakota State Water Commission are performed by the state District Courts.
<i>Oklahoma</i>	Oklahoma has not established a specialized water court. Judicial review of challenges to decisions by the Oklahoma Water Resources Board are performed by the state District Courts.
<i>Oregon</i>	Oregon has not established a specialized water court. Judicial review of challenges to decisions by the Oregon Water Resources Department are performed by the County Circuit Courts.
<i>South Dakota</i>	South Dakota has not established a specialized water court. Judicial review of challenges to decisions by the South Dakota Department of Environment and Natural Resources are performed by the state Circuit Courts.

<i>Texas</i>	Texas has not established a specialized water court. Judicial review of challenges to decisions by Texas Groundwater Conservation Districts or the Texas Water Development Board are performed by the state District Courts.
<i>Utah</i>	Utah has not established a specialized water court. Judicial review of challenges to decisions by the Utah Division of Water Rights are performed by the state District Courts.
<i>Washington</i>	<p>There have been various efforts in Washington to establish a water court. However, this effort has been focused on the creation of a specialty water court for the purpose of performing the many adjudications of water rights within Washington.</p> <p>Currently, Washington Superior Courts hear disputes relating to water rights, decisions from the Washington Department of Ecology relating to the administration of water rights, and adjudications. However, in 2002 a multi-branch Water Disputes Task Force was created and later recommended the creation of a separate, specialized statewide water court to handle more water right adjudications. This resulted in the creation of a substantial amount of legislation, though it does not appear any of those legislative proposals were successful. Then in 2004 the Board for Judicial Administration (BJA) worked to develop a judicial policy statement regarding water courts and made certain proposals for advancing adjudications in a timelier manner. This included the creation of a Water Court Work Group to develop a report that included background information as well as recommendations for a judicial response to certain proposals.</p> <p>“The report included background information on: Washington’s water laws; general adjudication processes; the differences between general adjudications and other cases heard in superior court; and, the need for specialized expertise in judges, commissioners, clerks, and other court personnel hearing and processing these cases. The report recommended a set of criteria for evaluating proposals for reforming the general adjudication process and posited advantages and disadvantages for several different proposals. The report recommended that, if the other branches of government decide to increase the pace for adjudicating water right claims around the state, a specialized water court should be created to hear the increased number of general adjudications. The report also made</p>

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Summary of Water Courts in the western United States

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	<p>several recommendations for how such a court might be implemented. The report also set forth recommendations for changing general adjudication procedures, including a recommendation about affidavits of prejudice. Several appendices to the report present additional background information on water law and general adjudications.” Upon review of the report, the BJA adopted a judicial policy statement making certain recommendations regarding the adjudications of water right cases, including certain elements relating to judicial terms of office and other criteria.</p> <p>Source: Washington Courts, https://www.courts.wa.gov/committee/?fa=committee.display&item_id=425&committee_id=109.</p> <p>It does not appear that any of these proposals were adopted modifying the judicial process for adjudicating water rights in Washington.</p>
<i>Wyoming</i>	Wyoming has not established a specialized water court. Judicial review of challenges to decisions by the Wyoming State Engineer’s Office are performed by the state District Courts.

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION TO STUDY THE
ADJUDICATION OF WATER LAW
CASES.

ADKT 0576

FILED

MAR 09 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

*ORDER CREATING COMMISSION TO STUDY
THE ADJUDICATION OF WATER LAW CASES*

On February 8, 2021, James W. Hardesty, Chief Justice of the Nevada Supreme Court, filed a petition seeking to create a Commission to Study the Adjudication of Water Law Cases in an effort to improve education, training, specialization, timeliness, and efficiency of Nevada's district courts in the judicial review process.

This court solicited public comment on the petition and a public hearing was held in this matter on March 3, 2021.

Having considered the petition and public comment, we conclude that such a commission should be appointed. The Commission shall conduct all hearings in public and post all meeting minutes and documents considered by the Commission on the Supreme Court's website. The commission shall file a report with this court on its findings and recommendations no later than April 1, 2022.

Accordingly, the Chief Justice shall appoint and chair a commission comprised of representatives from at least some or all of the following groups, entities, and industries:

1. Department of Conservation and Natural Resources/Division of Water Resources;

2. Practicing Water Rights Engineer/Hydrologist: involved in a wide range of projects and industries throughout Nevada;
3. Practicing Water Rights Attorney: involved in a wide range of projects and industries throughout Nevada;
4. Urban Municipal Water Purveyors: representing approximately 80% of the Nevada population:
 - a. Southern Nevada Water Authority;
 - b. Truckee Meadows Water Authority;
5. Rural Water Interests:
 - a. Central Nevada Regional Water Authority;
 - b. Humboldt River Basin Water Authority;
6. Agriculture: representing the largest water users in Nevada:
 - a. Nevada Farm Bureau;
 - b. County Farm Bureau;
7. Irrigation District;
8. Mining;
9. Environmental/non-governmental organizations:
 - a. The Nature Conservancy;
 - b. Nevada Conservation League;
 - c. Great Basin Water Network;
10. District Judges;
11. Rural Counties:
 - a. Eureka County Natural Resources;
 - b. Nye County Water District;
 - c. Lincoln County Water District;
12. Urban Nevada Counties:
 - a. Clark County;

b. Washoe County;

c. Carson County;

13. Inter-Tribal Council of Nevada, Inc.

Dated this 9TH day of March, 2021

1 Hardesty, C.J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

Cadish, J.
Cadish

Silver, J.
Silver

Pickering, J.
Pickering

Herndon, J.
Herndon

cc: Eric Dobberstein, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Bradley Crowell, Director, Department of Conservation and
Natural Resources
Adam Sullivan, Acting State Engineer
All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Elko County Bar Association
Douglas County Bar Association
Administrative Office of the Courts

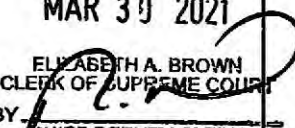
IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMISSION TO STUDY THE
ADJUDICATION OF WATER LAW
CASES.

ADKT 0576

FILED

MAR 30 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  CHIEF DEPUTY CLERK

*ORDER APPOINTING MEMBERS TO THE COMMISSION
TO STUDY THE ADJUDICATION OF WATER LAW CASES*

On March 9, 2021, this court created the Commission to Study the Adjudication of Water Law Cases (Commission). The following individuals are hereby appointed to the Commission, effective immediately.

Chief Justice James W. Hardesty, Commission Chair

Associate Chief Justice Ron Parraguirre, Supreme Court

Micheline Fairbank, Nevada Division of Water Resources
Department of Conservation and Natural Resources

Jason King, Practicing Water Rights Engineer/Hydrologist

Rick Felling, Practicing Water Rights Engineer/Hydrologist

John Entsminger, Urban Municipal Water Purveyor

John R. Zimmerman, Esq., Rural Municipal Water Purveyor

Laura Schroeder, Esq., Rural Water Interests/Water District

Bevan Lister, Agricultural

Tom Baker, Agricultural

Rusty Jardine, Esq., Irrigation Districts

Bert Bryan, Irrigation Districts

Ross de Lipkau, Esq., Mining

Allen Biaggi, Mining

Kyle Roerink, Environmental/NGOs

Karen Peterson, Esq., Practicing Water Rights
Attorney/Rural Counties

Oscar (Oz) Wichman, Rural Counties

Christopher W. Mixson, Esq., Inter-Tribal Council
of Nevada, Inc.

Paul G. Taggart, Esq., Practicing Water Rights
Attorney/Domestic Wells

Gordon H. DePaoli, Esq., Practicing Water Law Attorney

Judge Kathleen Drakulich, Washoe County

Judge John P. Schlegelmilch, Lyon County

Judge Gary Fairman, White Pine County

Judge Elizabeth Gonzalez, Clark County

It is so ORDERED.


_____, C.J.
Hardesty

cc: Bradley Crowell, Director, Department of Conservation and
Natural Resources
Adam Sullivan, Acting State Engineer
All District Court Judges
All Commission Members
Eric Dobberstein, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Elko County Bar Association
Douglas County Bar Association
Administrative Office of the Courts



STAFF REPORT

TO: Chairman and Board Members
THRU: Mark Foree, General Manager
FROM: Stefanie Morris, Manager, Water Resources
DATE: October 20, 2021
SUBJECT: **State Engineer Proposed Regulations on Water Right's Extension of Time R-169-20**

SUMMARY

In 2019, the legislature passed AB 62 requiring the State Engineer to adopt regulations to implement NRS 533.380 regarding the State Engineer's review and approval or denial of applications for extensions of time to submit proofs of completion and beneficial use. The State Engineer's office began to engage the public in 2020 regarding a proposed regulation. TMWA has participated in workshops and provided comments on several versions of the proposed regulation. The State Engineer has provided notice of intent to act on the current version of the proposed regulation on November 10, 2021.

A municipal water purveyor, like TMWA, is responsible for providing adequate water service to its customers and projected future customers based on its projections of future growth authorized by local governments. While TMWA must plan for and be ready to provide a water supply, the actual use of its water supply depends on factors that TMWA has little or no control over, including the pace of regional population growth, demands of its customers, the economy, and entitlement and planning decisions of local governments. As the largest municipal water purveyor in Northern Nevada, TMWA files approximately 600 extensions a year to keep its portfolio of water rights in good standing and available for its customers and future growth.

Overview

Staff is somewhat concerned that as drafted the regulation would create additional time and effort to protect water rights for future use. Specifically, each extension of time will require a written summary of the previous extensions as well as the work that has been completed towards perfecting the water right. The proposed regulation will increase the workload and administrative cost associated with those applications, which are filed annually. TMWA files about 600 applications each year, and the proposed regulation

would require substantial staff time and effort to review the history of each application to comply, especially where the underlying permit was previously held by another party because TMWA may not have any record of prior applications filed by that party. In that circumstance, TMWA staff would be required to spend additional time traveling to the State Engineer's Office to research permit files and summarizing prior extensions of time filed by others. Additionally, staff has concerns that the definition of steady application of effort is more limited than existing law and may have impacts to municipal water provider's ability to protect existing water right for future use.

STAFF RECOMMENDATION

Staff will continue to follow and engage in the process and submit written comments consistent with past comment letters. As additional information becomes available, staff will bring this back to the subcommittee.



STAFF REPORT

TO: Chairman and Board Members
THRU: Mark Foree, General Manager
FROM: Stefanie Morris, Manager, Water Resources
DATE: October 20, 2021
SUBJECT: **State Engineer Proposed Regulations on Hearings and Public Meetings held by the State Engineer R-125-20**

SUMMARY

In June 2020, the State Engineer began a public process to propose regulations for moving and amending existing hearing regulations to allow the State Engineer to have more defensible administrative records. Many changes are moving existing regulations in Nevada Administrative Code (NAC) 533 to NAC 532 so the regulations apply to all State Engineer hearings, not just protested hearings. Additionally, there are edits to address expert testimony, who can appear before the State Engineer, and matters related to evidence. The State Engineer has held a series of informal and formal workshops over the last two years. TMWA staff has participated in the workshops and has provided written comments.

Overview

Large parts of NAC 533 were moved into NAC 532 and amended slightly to make them applicable to more than protested hearings in front of the State Engineer. In general, TMWA staff is supportive of many of the changes that provide the State Engineer with the ability to protect the integrity of the administrative record by requiring certain standards be met for evidence, especially as it relates to experts. There are some amendments and new regulations that staff are working with the State Engineer's office to help revise or to ensure consistency with existing law.

STAFF RECOMMENDATION

Staff will continue to follow and engage in the process and submit written comments consistent with past comment letters. As additional information becomes available, staff will bring this back to the subcommittee.

PROPOSED REGULATION OF THE STATE ENGINEER

LCB File No. R125-20

January 11, 2021

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

AUTHORITY: §§1-38 and 44-49, NRS 532.120; §§39-43, NRS 532.120 and 533.365.

A REGULATION relating to water; reorganizing and revising provisions related to certain hearings and public meetings held by the State Engineer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Engineer to adopt regulations governing the practice and procedure of contests before the Office of the State Engineer. (NRS 532.120) Existing law also requires the State Engineer to adopt rules of practice for protest hearings against granting an application for a permit to appropriate water. (NRS 533.365) Existing regulations set forth the rules of practice governing protest hearings. (NAC 533.010-533.380) This regulation: (1) reorganizes and revises provisions relating to protest hearings; and (2) sets forth procedures for various other public meetings and hearings held by the State Engineer.

Section 12 of this regulation provides that the provisions of chapter 532 of NAC apply to hearings before the State Engineer other than disciplinary hearings related to the professional conduct of state water right surveyors and well drillers. **Section 47** of this regulation makes a conforming change related to the exclusion of such disciplinary hearings.

Section 13 of this regulation sets forth certain procedures for a public hearing and presenting public comment to the State Engineer.

Section 14 of this regulation sets forth who has standing to participate in certain hearings and enforcement actions before the State Engineer.

Section 15 of this regulation sets forth various factors that the State Engineer will consider in determining whether to grant a request to intervene in a hearing.

Section 16 of this regulation sets forth the requirements for the service of pleadings or other documents filed in a hearing.

Section 17 of this regulation sets forth the requirements for filing a motion requesting an order by the State Engineer concerning a matter subject to a hearing.

Section 18 of this regulation provides that the objective of a hearing is to develop a record upon which the State Engineer may rely to make a sound decision without causing unnecessary delay and expense.

Section 19 of this regulation authorizes the State Engineer to designate a person to preside over a hearing. The person may make the final ruling in the matter if authorized to do so in writing by the State Engineer. **Section 48** of this regulation makes a conforming change to clarify that references to “State Engineer” in provisions related to hearings include any person designated to preside over a hearing.

Section 20 of this regulation: (1) provides that hearings will be held at the time and place designated in the notice; and (2) requires parties to a hearing and any spectators to conduct themselves in a respectful manner.

Section 21 of this regulation sets forth the qualifications and requirements for an attorney to represent a party at a hearing.

Section 22 of this regulation provides that issues to be considered at a hearing will be determined from the documents that initiated the hearing but that the State Engineer may define or limit the issues to be considered.

Section 23 of this regulation provides that proceedings of a hearing will be reported by a certified court reporter and sets forth how the fees of the court reporter will be apportioned between the parties.

Section 24 of this regulation authorizes prehearing discovery upon stipulation between the parties or order of the State Engineer.

Section 25 of this regulation describes the procedures for a prehearing conference.

Section 26 of this regulation requires parties to identify witnesses before the hearing and sets forth the procedure for determining whether a person is qualified to testify as an expert.

Section 27 of this regulation requires testimony of witnesses to be given under oath or affirmation and authorizes a witness to give testimony by narrative or be directed by the attorney or agent of the witness.

Section 28 of this regulation provides that the State Engineer may require parties and witnesses to provide written testimony under certain circumstances.

Section 29 of this regulation requires that evidence and testimony be relevant to the subject matter of the proceeding and authorizes the State Engineer to exclude evidence or testimony that is irrelevant, incompetent or unduly repetitious.

Section 30 of this regulation sets forth the standing for providing rebuttal evidence.

Section 31 of this regulation authorizes the State Engineer to require the identification and exchange of exhibits before a hearing.

Section 32 of this regulation sets forth requirements for exhibits.

Section 33 of this regulation authorizes the State Engineer to take administrative notice of: (1) files and records of the State Engineer; (2) public records; (3) facts of which judicial notice may be taken; and (4) certain technical or scientific data.

Section 34 of this regulation authorizes, under certain circumstances, the parties to stipulate to any fact in issue.

Section 35 of this regulation authorizes a party to request a continuance of a hearing.

Section 36 of this regulation provides that if a party fails to appear at a hearing without prior notification to the State Engineer, the State Engineer will proceed to hear the matter.

Section 37 of this regulation authorizes the State Engineer to consolidate two or more proceedings into one hearing if the issues are substantially the same and the interests of the parties will not be prejudiced by the consolidation.

Section 38 of this regulation authorizes the State Engineer to order the presentation of further evidence on any issue.

Sections 40-43 of this regulation reorganize existing regulations related to a protest against the granting of an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right.

Section 44 of this regulation sets forth certain requirements for a hearing of objections to a preliminary order of determination to the use of water.

Section 45 of this regulation sets forth the requirements for a person to request that the State Engineer adopt, amend or repeal a regulation relating to the practice and procedure of hearings.

Section 49 of this regulation repeals obsolete regulations related to hearings to show cause and independent advisory committees. **Section 49** also repeals various provisions related to protest hearings that are reorganized into chapter 532 of NAC by **sections 2, 7, 10, 11, 13 and 16-43** of this regulation.

Section 1. Chapter 532 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 45, inclusive, of this regulation.

Sec. 2. *“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.*

Sec. 3. *“Beneficial use” means the use of water in the quantity necessary for the stated purpose of the appropriation of the water, which includes, without limitation, the manner of use, the period of use, the place of use and the point of diversion.*

Sec. 4. *“Claimant” means a person claiming an appropriative interest in a stream system or underground water involved in the determination of relative rights to the use of the water.*

Sec. 5. *“Hearing” means a proceeding before the State Engineer where parties may present evidence or give sworn testimony.*

Sec. 6. *“Objector” means a claimant who has filed a timely objection with the State Engineer pursuant to NRS 533.145.*

Sec. 7. *“Party” means an applicant, claimant, objector, intervenor, protestant or any other interested person.*

Sec. 8. *“Proof of beneficial use” means a verified statement filed with the Office of the State Engineer providing a detailed description of how water has been applied to beneficial use as required under the terms of a permit to appropriate water.*

Sec. 9. *“Proof of completion” means a verified statement filed with the Office of the State Engineer providing a detailed description of the works actually constructed to divert water as required under the terms of a permit to appropriate water.*

Sec. 10. *“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.*

Sec. 11. *“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.

Sec. 12. 1. The provisions of this chapter:

(a) Govern the practice and procedure of:

(1) A hearing on a protest against an application to appropriate water or to change the point of diversion, manner of use or place of use of an existing water right pursuant to NRS 533.365;

(2) A hearing on an application for an extension of time to file proof of completion or proof of beneficial use pursuant to NRS 533.380; and

(3) Except as otherwise provided in subsection 2, any other public meeting or hearing held by the State Engineer pursuant to chapter 533, 534, 535 or 536 of NRS; and

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

2. The provisions of this chapter do not apply to any disciplinary hearing related to the professional conduct of a state water right surveyor or a well driller.

3. 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.

Sec. 13. 1. The State Engineer may hold a public meeting to:

(a) Allow any person to provide public comment in response to a notice of such a meeting disseminated by the State Engineer.

(b) Develop a record upon which the State Engineer may rely to make a sound decision, without causing unnecessary delay and expense.

2. 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.

3. The State Engineer may limit the time allowed for public comment.

4. Any documents related to a public meeting must be filed with the Office of the State Engineer at least 2 days before the public meeting.

Sec. 14. *1. Standing to participate in a hearing before the State Engineer is as follows:*

(a) In a hearing to review a cancelled permit, the holder of the permit has standing to participate. Any other person who wishes to intervene in the proceeding must file a petition for intervention pursuant to section 15 of this regulation.

(b) In an enforcement action for an alleged violation of chapter 533, 534, 535 or 536 of NRS, the person who is alleged to have committed the violation has standing to participate. Any other person who wishes to intervene in the proceeding must file a petition for intervention pursuant to section 15 of this regulation.

(c) In a hearing of objections to a preliminary order of determination establishing the several rights of claimants to the waters of the stream issued by the State Engineer pursuant to NRS 533.140, objectors and claimants have standing to participate. Except as otherwise provided in NRS 533.130, no other person may intervene in a hearing of objections.

2. This section does not limit the right of any person expressly authorized to participate in an action before the State Engineer pursuant to chapter 533, 534, 535 or 536 of NRS.

Sec. 15. *The State Engineer will consider a request to intervene in a hearing from a person who demonstrates a protectable interest in a water right or the use of water in a stream or underground water based on the following factors:*

1. In favor of allowing intervention:

(a) The extent that the petitioner's participation may reasonably be expected to assist in the development of a complete record;

(b) The extent of the petitioner's property, financial or other interests in the proceeding; and

(c) The possible effect on the petitioner's interests of any decision or order that may be issued by the State Engineer.

2. In favor of not allowing intervention:

(a) The availability of other means whereby the petitioner's interests will be protected;

(b) The extent the petitioner's interests will be represented by existing parties; and

(c) The extent the petitioner's participation will inappropriately broaden the issues or delay the hearing.

Sec. 16. *1. Any pleading or other document filed in a 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) If the party is represented by an attorney or agent, must be made upon the attorney or agent;

(b) May be made in person, by mail or by electronic mail; and

(c) Shall be deemed to be complete on the date of personal service, mailing or electronic transmission, as applicable.

2. In computing any period prescribed for filing or serving a motion, response or reply, 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.

Sec. 17. 1. *A party requesting an order by the State Engineer concerning a matter subject to a 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 on all parties of record personally or by mail.

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 21 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 14 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 7 days after the service of the response.*

9. *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.*

Sec. 18. *The objective of a 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.*

Sec. 19. *The State Engineer may designate a person to preside over a hearing. Any such person may make the final ruling in the matter if authorized to do so in writing by the State Engineer.*

Sec. 20. 1. *Hearings will be held at the time and place designated by the notice of hearing.*

2. *Each party to a 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.*

Sec. 21. 1. *Subject to the specific requirements in this section for representation by an attorney, in any hearing before the State Engineer, a party may represent himself or herself or may be represented by an attorney. Any other person who satisfies the State Engineer that the person possesses the expertise and is otherwise competent to advise and assist in the presentation of matters before the State Engineer may be allowed to appear on behalf of one or more parties.*

2. The provisions of this section rather than the provisions of Supreme Court Rule 42 govern appearances before the State Engineer by an attorney who is not admitted and entitled to practice before the Supreme Court of Nevada.

3. An attorney appearing in any proceeding before the State Engineer must be admitted to practice and in good standing before the highest court of any state or the District of Columbia.

4. With respect to any attorney appearing as a representative in a hearing:

(a) If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada and does not reside in this State, the attorney must associate with an attorney so admitted and entitled to practice and must file a notice of association with the State Engineer pursuant to this section unless, except as otherwise provided in paragraph (b), the attorney filing the notice has appeared at least once before the State Engineer in the 3 years immediately preceding the date of the hearing.

(b) Notwithstanding any previous appearance before the State Engineer by the attorney, the State Engineer may, for good cause shown, require the attorney to associate with an attorney so admitted and entitled to practice and to file a notice of association pursuant to this section.

5. A notice of association required pursuant to this section must:

(a) Identify each jurisdiction in which the attorney who is required to file the notice is admitted and in good standing;

(b) Identify by name and State Bar of Nevada identification number the attorney with whom the attorney who is required to file the notice is associating;

(c) Describe the qualifications of the attorney who is required to file the notice to advise and assist in the party at the hearing before the State Engineer; and

(d) Be signed by the attorney who is required to file the notice and by the attorney identified in paragraph (b).

6. Except as otherwise provided in subsection 7, the State Engineer may require the attorney who is admitted and entitled to practice before the Supreme Court of Nevada and who is identified in a notice of association pursuant to paragraph (b) of subsection 5 to sign any pleadings and be present at any proceeding on the record.

7. An attorney who resides in this State and who is not admitted and entitled to practice before the Supreme Court of Nevada may not appear in any hearing unless the attorney:

(a) Is qualified or has an application for qualification pending for the limited practice of law pursuant to Supreme Court Rule 49.1; and

(b) Associates with an attorney who is admitted and entitled to practice before the Supreme Court of Nevada and files a notice of association pursuant to this section. The attorney who is admitted and entitled to practice before the Supreme Court of Nevada and who is identified in the notice of association must sign any pleadings and be present at any proceeding on the record.

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

9. 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.

Sec. 22. 1. Issues to be considered during a hearing will be determined from the contents of the documents that initiated the hearing, including, without limitation, an application, a protest or an order issued by the State Engineer.

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

Sec. 23. 1. The State Engineer will ensure that proceedings at a hearing are reported by a certified court reporter.

2. The original and one copy of the transcript of the proceedings, either in paper or electronic form, must be filed with the State Engineer.

3. The parties 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 fees of the court reporter for reporting and transcribing the hearing and any required copies of the transcript must be paid:

(a) For protested applications or a hearing of objections, by the parties pro rata, based on the percentage of the transcript taken by each party's own case; and

(b) For all other matters, equally between the parties.

5. Any person may obtain a copy of a transcript prepared under this section by requesting such a copy from the court reporter.

6. The State Engineer will not accept corrections to a certified transcript filed with the Office of the State Engineer.

Sec. 24. 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.

Sec. 25. 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 hearing 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.

Sec. 26. *1. At a prehearing conference held pursuant to section 25 of this regulation, or before the date set for the hearing if no prehearing conference is held, each party must identify the persons intending to offer direct testimony at the hearing. If a party fails to identify a witness, the State Engineer may refuse to allow that witness to testify. The State Engineer may require a separate hearing to determine the qualifications of any identified expert who has not previously been qualified by the State Engineer.*

2 In determining whether a person is qualified to testify as an expert, the State Engineer will consider whether:

(a) The person is qualified as an expert by special knowledge, skill, experience, training or education.

(b) The person's expert opinion is based on reliable methodology, including, without limitation, whether the expert opinion is:

(1) Within a recognized field of expertise;

- (2) Testable and has been tested;*
 - (3) Published and subjected to peer review;*
 - (4) Generally accepted in the field of expertise; and*
 - (5) Based on particularized facts and not assumption, conjecture or generalization.*
- 3. If the State Engineer determines that testimony offered by an expert witness provides technical or scientific data that is already within the field of expertise of the Office of the State Engineer, the State Engineer will take administrative notice of the testimony.*

Sec. 27. 1. All testimony of witnesses appearing on behalf of a party must be given under oath or affirmation. Public comment 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. All witnesses may be examined by the State Engineer and the staff of the State Engineer.

Sec. 28. 1. If the parties 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.*

Sec. 29. 1. *All evidence and testimony offered in a hearing must be relevant to the subject matter of the proceeding.*

2. *The State Engineer may exclude evidence or 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 evidence or testimony when making his or her final determination.*

Sec. 30. *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.*

Sec. 31. 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.*

Sec. 32. 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. Each party must submit to the State Engineer:

(a) An original and one copy of each exhibit that is offered into evidence; and

(b) An electronic copy of each documentary exhibit that is offered into evidence and the exhibit list, which must be saved as a separate file with the name of the party submitting the exhibit, the exhibit number and a short description of the exhibit.

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.

Sec. 33. *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.

Sec. 34. 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.*

Sec. 35. 1. *A party may request that the State Engineer continue a 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 of the new date set for the hearing.*

Sec. 36. *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.*

Sec. 37. 1. *The State Engineer may consolidate two or more proceedings into one hearing 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.

Sec. 38. At any time during a 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.

Sec. 39. 1. The provisions of sections 39 to 43, inclusive, of this regulation apply to protests against the granting of an application to appropriate water or to change the place of diversion, manner of use or place of use of an existing water right pursuant to NRS 533.365 and protest hearings.

2. If there is a conflict between sections 15 to 38, inclusive, of this regulation and sections 39 to 43, inclusive, of this regulation, the provisions of sections 39 to 43, inclusive, of this regulation control.

Sec. 40. 1. The form for filing a protest against the granting of the application pursuant to NRS 533.365 are available:

(a) Upon request and furnished without charge by the State Engineer; and

(b) On the Internet website of the Division.

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 provided pursuant to subsection 1.

Sec. 41. 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.

Sec. 42. 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.

Sec. 43. *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 parties, 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 issue his or her ruling on the matter.

Sec. 44. *1. The provisions of this section apply to a hearing of objections to a preliminary order of determination held pursuant to NRS 533.150. If there is a conflict between sections 15 to 38, inclusive, of this regulation and this section, the provisions of this section control.*

2. A hearing of objections held by the State Engineer:

(a) Must be held in accordance with NRS 533.150, 533.155 and 533.160.

(b) Is intended to allow the objector to present evidence to the State Engineer in support of the objection to the preliminary order of determination. Any person who is not a claimant in the proceedings may make public comment to express general support or opposition to a particular objection.

3. The State Engineer may allow the questioning of witnesses in order to clarify testimony.

Sec. 45. *1. If a person desires to petition the State Engineer to adopt, amend or repeal a regulation regarding the practice and procedure of 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.

Sec. 46. NAC 532.010 is hereby amended to read as follows:

532.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 532.020 to 532.160, inclusive, *and sections 2 to 11, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 47. NAC 532.120 is hereby amended to read as follows:

532.120 ~~“Requirement” means:~~

1. *Except as otherwise provided in subsection 2, “requirement” means:*

(a) Any provision of chapter 533, 534, 535 or 536 of NRS;

~~12-1~~ *(b)* Any provision of a permit, certificate, order or decision issued or regulation adopted by the State Engineer; or

~~13-1~~ *(c)* Any provision for the development and use of water from a well for domestic purposes pursuant to NRS 534.013 and 534.180.

2. The term “requirement” does not include any provision of title 48 of NRS or any regulation adopted pursuant thereto relating to the professional conduct of a state water right surveyor or a well driller.

Sec. 48. NAC 532.140 is hereby amended to read as follows:

532.140 “State Engineer” ~~has the meaning ascribed to it in NRS 533.015.~~ *means:*

- 1. The State Engineer;*
- 2. Any duly authorized assistant of the State Engineer; or*
- 3. A person designated by the State Engineer to preside over a hearing.*

Sec. 49. NAC 532.080, 532.090, 532.180, 532.230, 532.240, 532.250, 533.010, 533.020, 533.030, 533.050, 533.060, 533.070, 533.080, 533.090, 533.110, 533.120, 533.130, 533.140, 533.141, 533.142, 533.143, 533.144, 533.150, 533.160, 533.170, 533.180, 533.190, 533.200, 533.210, 533.220, 533.230, 533.240, 533.250, 533.260, 533.265, 533.280, 533.290, 533.300, 533.310, 533.320, 533.330, 533.340, 533.350, 533.360, 533.365, 533.370 and 533.380 are hereby repealed.

TEXT OF REPEALED SECTIONS

532.080 “Hearing to show cause” defined. (NRS 532.120) “Hearing to show cause” means a hearing between a respondent and the Division to determine the manner in which the

respondent acted upon a finding of alleged violation or a violation order issued by the Division to the respondent.

532.090 “Independent advisory committee” defined. (NRS 532.120) “Independent advisory committee” means a committee that:

1. Consists entirely of members appointed by the Director of the State Department of Conservation and Natural Resources who have knowledge of and experience in the laws and regulations of this State relating to water; and
2. Is formed to review an appeal of a penalty assessed for a violation.

532.180 Computation of time; extension of time; date on which information that is hand-delivered or mailed is deemed filed; electronic transmission of information not accepted without prior written approval. (NRS 532.120, 533.481, 534.193, 535.200, 536.200)

1. In computing any period of time prescribed by this chapter, the day of the act from which the designated period begins is included. The last day of the period so computed is included unless it is a Saturday, Sunday or legal holiday. If the last day is a Saturday, Sunday or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. If the period prescribed is less than 7 days, intermediate Saturdays, Sundays or legal holidays are excluded.

2. The State Engineer may extend any time limit contained in this chapter for good cause. All requests for extensions must be submitted in writing within the period specified by the State Engineer.

3. Any information which is hand-delivered to the Division during regular business hours shall be deemed filed on the date of delivery.

4. Any information deposited in the United States mail shall be deemed filed on the date of the postmark on the envelope in which it was mailed, as provided in NRS 238.100.

5. Unless the State Engineer gives prior written approval, any information transmitted electronically will not be accepted for filing.

532.230 Hearings to show cause: Appearance of parties; procedure. (NRS 532.120, 533.481, 534.193, 535.200, 536.200)

1. The parties may appear in person at a hearing to show cause and may be represented by counsel. All testimony must be given under oath and recorded.

2. The Division:

(a) Shall determine the order of the presentation of evidence; and

(b) May limit the time and scope of the examination of witnesses and disallow repetitive testimony.

532.240 Hearings to show cause: Conduct of persons; maintenance of order. (NRS 532.120, 533.481, 534.193, 535.200, 536.200)

1. A person who appears at a hearing to show cause shall conform to the recognized standards of ethical and courteous conduct as determined by the Division. All parties to the hearing, their counsel and the spectators shall conduct themselves in a respectful manner.

2. The Division may take any action which it determines is necessary to maintain order during a hearing to show cause, including, without limitation:

(a) Excluding a party or his or her attorney or authorized representative from the hearing;

(b) Excluding a witness from the hearing; and

(c) Limiting the taking of testimony and presentation of evidence during the hearing.

532.250 Hearing before independent advisory committee: Request; extension of time; notice; final decision. (NRS 532.120, 533.481, 534.193, 535.200, 536.200)

1. A respondent may request, in writing, a hearing before an independent advisory committee within 30 days after the date the State Engineer imposes a penalty against the respondent.
2. The independent advisory committee shall schedule a hearing within 30 days after receiving the request, unless the Division extends the time for good cause.
3. The State Engineer, in conjunction with the independent advisory committee, will determine the time, date and location of the hearing and notify the respondent of that fact.
4. The State Engineer will issue a final decision concerning the appeal within 30 days after the hearing.

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.

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.

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.

533.050 “Party” defined. “Party” means an applicant or protestant.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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

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.

STEVE SISOLAK
Governor

STATE OF NEVADA

BRADLEY CROWELL
Director

ADAM SULLIVAN, P.E.
State Engineer



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES

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NOTICE OF INTENT TO ACT UPON A REGULATION
LCB File No. R169-20
and Hearing Agenda

Notice of Hearing for the Adoption, Amendment or Repeal of Regulations of
The Department of Conservation and Natural Resources, Division of Water Resources

The State of Nevada, Department of Conservation and Natural Resources, Nevada Division of Water Resources ("Division") will hold a public hearing as follows:

DATE: November 10, 2021
TIME: 9:00 a.m.
LOCATION: Division of Water Resources, Tahoe Hearing Room
901 S. Stewart Street, Ste. 2002, Carson City, Nevada

You may also participate via video or telephone at
<https://call.lifesizecloud.com/6895257> and (877) 422-8614, 6895257#

Meeting materials are available on the Division's website at <http://water.nv.gov>.

AGENDA

1. Open Hearing: R169-20
2. Presentation and Discussion of Proposed Regulation.

LCB Files No. R169-20. A regulation relating to water; setting forth the requirements for applying for an extension of time within which construction work must be completed or water must be applied to a beneficial use; setting forth various factors that the State Engineer will consider when considering such an application; and providing other matters properly relating thereto.

3. Public Comment. *The Hearing Officer may limit public comments to 3 minutes per speaker but may not restrict comments based upon viewpoint. No action may be taken upon a matter raised under the public comment period unless the matter itself has been specifically included on this Agenda as an action item.*

4. Adjournment.

Note: Any agenda may be taken out of order; items may be pulled or removed from the agenda at any time.

The purpose of the hearing is to receive comments from all interested persons regarding the Adoption of regulations that pertain to chapter 533 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. Statement of the need for and the purpose of the proposed regulation or amendment: The Division is proposing to amend NAC 533. Amendments to the existing regulations are proposed to add language in accordance with Assembly Bill 62 of the 2019 Nevada Legislature directing the State Engineer to adopt regulations necessary to carry out the provisions of NRS 533.380.

2. Description of the proposed regulation: Proposed regulation relating to water; setting forth the requirements for applying for an extension of time within which construction work must be completed or water must be applied to a beneficial use; setting forth various factors that the State Engineer will consider when considering such an application; and providing other matters properly relating thereto. The amendments include:

- a. Definitions;
- b. Requirements for information to be included in an application for extension of time to file proof of completion or proof of beneficial use;
- c. Factors the State Engineer will consider when evaluating and application for extension of time file proof of completion or proof of beneficial use;
- d. Factors that the State Engineer shall consider when evaluating an application for extension of time to file proof of completion or proof of beneficial use; and
- e. A requirement for periodic review of the regulations.

3. The estimated economic effect of the regulation on the business which it is regulate and on the public: There are no economic effects of the regulation on the business that it regulates and no impact on the public.

4. The estimated cost to the agency for enforcement of the proposed regulation: None.

5. Overlap or duplication of regulations: None.

6. Requirement pursuant to Federal law: None.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions: None.

8. New fee or increases an existing fee: None.

NOTICE OF INTENT TO ACT UPON A REGULATION

LCB File No. R169-20

and Hearing Agenda

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Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing, or via video or teleconference, or may address their comments, data, views, or arguments, in written form, to Micheline Fairbank (mfairbank@water.nv.gov), Division of Water Resources, 901 South Stewart Street, Suite 2002, Carson City, Nevada 89701. **Written submissions must be received by the Division on or before November 3, 2021.** If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division of Water Resources may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be available at the Division of Water Resources offices in Carson City and Las Vegas, as well as on the website at <http://water.nv.gov/>. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This Notice of Workshop has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

CARSON CITY

Bryan Building
901 S. Stewart Street
Carson City, NV

LAS VEGAS

Nevada Division of Water Resources
Southern Business Office
400 Shadow Lane, Suite 201
Las Vegas, NV

Grant Sawyer Building,
555 E. Washington Avenue
Las Vegas, NV

ELKO

Nevada Division of Water Resources
Elko Office
1250 Lamoille Hwy, Suite 1047
Elko, NV

INTERNET WEBSITES

Nevada Public Notice website:
<http://notice.nv.gov>

Legislative Council Bureau
<http://leg.state.nv.us>

Nevada Division of Water Resources
<http://water.nv.gov>

NEVADA COUNTY PUBLIC LIBRARIES

Carson City Library
900 North Roop Street
Carson City, Nevada 89701-3101

Lincoln County Library
63 Main Street
Pioche, Nevada 89043

Churchill County Library
553 South Main Street
Fallon, Nevada 89406-3306

Lyon County Library System
20 Nevin Way
Yerington, Nevada 89447-2399

Las Vegas-Clark County Library District
Headquarters
833 Las Vegas Boulevard
North Las Vegas, Nevada 89101-2062

Mineral County Public Library
P.O. Box 1390
Hawthorne, Nevada 89415

Douglas County Public Library
1625 Library Lane
Minden, Nevada 89423-0337

Pershing County Library
1125 Central Avenue
Lovelock, Nevada 89419

Elko County Library
720 Court Street
Elko, Nevada 89801-3397

Storey County Public Library (CLOSED,
instead, sent to the Storey County Clerk's
Office, see below)

Esmeralda County Library
Corner of Crook & 4th Street
P.O. Box 430
Goldfield, Nevada 89013-0430

Storey County Treasurer and Clerk's Office
Drawer D
Virginia City, Nevada 89440

Eureka County Library
10190 Monroe Street
Eureka, Nevada 89316

Tonopah Public Library (Nye County)
P.O. Box 449
Tonopah, Nevada 89049

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445-3095

Washoe County Library System
301 South Center Street
Reno, Nevada 89501-2102

Battle Mountain Branch Library (Lander County)
625 South Broad Street
Battle Mountain, Nevada 89820

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

NOTICE OF INTENT TO ACT UPON A REGULATION

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Members of the public who would like additional information about the proposed regulation may contact Micheline Fairbank, via email to mfairbank@water.nv.gov.

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Division in writing, no later than five (5) working days before the hearing, via email to mfairbank@water.nv.gov

PROPOSED REGULATION OF THE STATE ENGINEER

LCB File No. R169-20

November 10, 2021

AUTHORITY: §§1-13, NRS 532.120 and 533.380.

A REGULATION relating to water; setting forth the requirements for applying for an extension of time within which construction work must be completed or water must be applied to a beneficial use; setting forth various factors that the State Engineer will consider when considering such an application; and providing other matters properly relating thereto.

Section 1. Chapter 533 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 12, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person who files an application pursuant to NRS 533.380 for an extension of time within which to complete construction work or apply water to beneficial use.*

Sec. 4. *“Beneficial use” means the use of water in the quantity necessary for the stated purpose of the appropriation of the water.*

Sec. 5. *“Perfect an appropriation” or “perfect the appropriation” means:*

1. Carrying out all the requirements of a permit to appropriate water to place water to beneficial use which is finalized through the issuance of a certificate of appropriation and may include, without limitation, constructing diversion works, installing measuring devices, submitting proof of completion, placing water to beneficial use and submitting proof of beneficial use.

Sec. 6. *“Proof of beneficial use” means a verified statement filed with the Office of the*

State Engineer pursuant to NRS 533.400 demonstrating that the water has been applied to beneficial use as required under the terms of a permit to appropriate water.

Sec. 7. *“Proof of completion” means a verified statement filed with the Office of the State Engineer pursuant to NRS 533.390 describing the works actually constructed to divert water as required under the terms of a permit to appropriate water.*

Sec. 8. *For the purposes of sections 2 to 12, inclusive, of this regulation and NRS 533.380 and 533.395, the term “project” means a planned enterprise or undertaking pursued individually or collaboratively to achieve a specific goal. The term includes, without limitation, a subdivision with multiple phases.*

Sec. 9. *For the purposes of NRS 533.380 and 533.395:*

1. “Integrated system” means a complex or unitary whole consisting of separate, integrated and interrelated elements. The term includes, without limitation, a ranch with multiple irrigated fields and the components of a water system.

2. “Steady application of effort” means, under all the facts and circumstances and as demonstrated by evidence, affirmative and meaningful action taken by the holder of a permit to perfect an appropriation before the time set by the State Engineer pursuant to NRS 533.380, including, without limitation, any extension previously granted by the State Engineer.

Sec. 10. *1. An application for an extension of time to file proof of completion or proof of beneficial use pursuant to NRS 533.380 must be made on the form prescribed by the Office of the State Engineer and, in addition to the requirements of subsection 3 of NRS 533.380, must include, without limitation:*

(a) The number of years the applicant is requesting to extend the time in which to file proof of completion or proof of beneficial use and an explanation for the amount of time

requested;

3. A written summary of the work performed to perfect the appropriation, beginning on the date the permit was issued;

(b) If the application for an extension is for a municipal or quasi-municipal use, any information required to address the factors considered by the State Engineer pursuant to subsection 4 of NRS 533.380;

4. A written description of any previous applications for an extension of time that have been submitted by the applicant since the effective date of this regulation, which must include, without limitation, the number of years granted for each previous application filed;

5. If any previous application for an extension of time has been granted, a detailed written explanation of the work actually performed during the most recent extension period and evidence documenting the work performed during the previous extension period, which may include, without limitation, receipts, photographs, construction plans or any other evidence of reasonable diligence in the construction of work or applying water to beneficial use;

6. A detailed written explanation of the work expected to be performed if the extension is granted;

(c) Any meaningful action taken by the applicant to perfect the appropriation as described in section 11 of this regulation;

(d) Any other information that the applicant believes demonstrates the need for the extension; and

(e) Any other information requested by the State Engineer.

2. The State Engineer will not consider any protest or objection to an application for an extension of time.

Sec. 11. *1. When considering whether an applicant has demonstrated good faith and reasonable diligence to perfect an appropriation as required by NRS 533.380, the State Engineer will consider evidence of the applicant's steady application of effort and other actions toward perfecting the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances submitted by the applicant, including, without limitation:*

(a) For all manners of use, as applicable:

- (1) The drilling and equipping of a well at the point of diversion;*
- (2) The installation of a meter at the location of discharge of the well;*
- (3) The installation of pipes or ditches to convey water to the place of use;*
- (4) The installation of a headgate, weir, dam or other diversionary structure at the point of diversion;*
- (5) The improvement of a spring;*
- (6) The placement of a portion of the water to beneficial use in accordance with the terms of the permit to appropriate water;*
- (7) Actions undertaken to complete the permitting or licensing requirements of any federal, state or local agency; and*
- (8) Any other action considered by the State Engineer to constitute significant progress in the perfection of a water right;*

(b) For commercial use, the construction of infrastructure and facilities;

(c) For construction use:

- (1) The number of trucks filled from a standpipe for dust control or compaction; and*
- (2) The progress of all projects where the water for which the permit has been issued is used;*

(d) For domestic use, any activity performed in preparation for the construction of a single family residence or an accessory dwelling unit, including, without limitation, drafting construction plans, applying for building permits, or securing easements;

(e) For industrial, utility, mining, milling or dewatering use, the construction of facilities, including, without limitation, foundations, buildings, power plants, processing plants, piping and instrumentation;

(f) For irrigation use:

(1) The installation of sprinklers, wheel lines, pivots or other components of an irrigation system; and

(2) The construction of ditches, berms, check dams or any other structure used to deliver and control water on the field within the place of use;

(g) For supplemental irrigation use, the irrigation performed under the primary right to appropriate water;

(h) For municipal or quasi-municipal use:

(1) The number of completed units in the subdivision or water system;

(2) The dedication of a right to appropriate water to a subdivision, parcel or tract and the recording of the associated map within the place of use;

(3) Whether the application is consistent with a water resource plan that complies with NRS 278.0228; and

(4) The granting of any state or local approval, including, without limitation, approval from the Public Utilities Commission of Nevada;

(i) For recreational use, the construction of any infrastructure necessary for recreational purposes; and

(j) For a stockwater or a wildlife use:

(1) The construction of wind turbines, solar panels, diesel engines or any other power sources;

(4) The construction of pipes, float valves, troughs, spring boxes or any similar device

(5) (3) The placement of stock on appurtenant land consistent with requirements in NRS Chapter 533; and

(6) (4) The securing of access to public lands through the appropriate agency.

(7) 2. As used in this section, “supplemental irrigation use” means the use of an additional appropriation of water for irrigation purposes to supplement an existing appropriation of water at the place of use of the existing appropriation during a period when the full amount of the existing appropriation is unavailable. A supplemental irrigation use, when combined with the use under the existing appropriation, shall not exceed the total duty of the existing appropriation.

Sec. 12. *In reviewing an application for an extension of time to file proof of completion or proof of beneficial use submitted pursuant to NRS 533.380, the State Engineer will consider, without limitation:*

1. The number of prior applications for an extension of time submitted by the applicant since the effective date of this regulation;

2. The consistent, measurable efforts of the applicant to perfect the appropriation, including, without limitation:

(a) Whether the applicant has consistently completed the actions to perfect the appropriation set forth by the applicant in previous applications for an extension;

(b) Any significant actions set forth in section 11 of this regulation taken by the applicant to demonstrate his or her good faith and reasonable diligence to perfect the appropriation;

and

(c) Any explanation provided by the applicant for his or her failure to perfect the appropriation by the date set forth in his or her permit or previous application for an extension;

- 3. The number of years for which the applicant is requesting an extension;*
- 4. Whether the applicant has demonstrated good faith and reasonable diligence in constructing works and placing water to beneficial use;*
- 5. Whether the hydrographic basin in which the permit to appropriate water has been issued has been designated a critical management area by the State Engineer pursuant to subsection 7 of NRS 534.110 or whether there is an approved groundwater management plan for the basin pursuant to NRS 534.037;*
- 6. Whether the application is subject to any order of the State Engineer;*
- 7. Any economic conditions or natural disasters which make the holder of the permit unable to construct works and place water to beneficial use;*
- 9. Actions undertaken to comply with an order of the State Engineer; and*
- 8. Any other information the State Engineer determines is relevant.*

Sec. 13. *The Division of Water Resources shall review these regulations not less than every three years and consider whether any of these regulations should be amended or repealed.*

Sec. 14. 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.

July 16, 2021

Gordon H. DePaoli
E-MAIL: gdepaoli@woodburnandwedge.com
DIRECT DIAL: (775) 688-3010

*Via Electronic Mail mfairbank@water.nv.gov
mflatley@water.nv.gov*

Micheline Fairbank, Deputy Administrator
Melissa Flatley, Chief, Hearing Section
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

**Re: Truckee Meadows Water Authority's (TMWA) Comments on Proposed
Regulation Concerning Hearings and Public Meetings
LCB File No. R125-20**

Dear Ms. Fairbank and Ms. Flatley:

Set forth below are TMWA's comments on the Proposed Regulation concerning hearings, meetings and practice and procedure before the State Engineer. The comments follow the organization of the Proposed Regulation.

Section 3 Beneficial Use

In TMWA's judgment, beneficial use need not be defined in this Regulation. Moreover, the definition in this Proposed Regulation and the definition of the same phrase in the Proposed Regulation R169-20 are slightly different. As you know, N.R.S. 533.035, without a definition, makes "beneficial use" the "basis, the measure and the limit of the right to use water." Beneficial use as the basis of the right to use water requires some recognition, either legislative or judicial, that the use is "beneficial." The definition does not capture that concept.

Section 15 Intervention

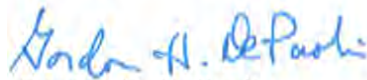
In TMWA's judgment, this rule should more closely follow the provisions of Rule 24 of the Nevada Rules of Civil Procedure. It need not state the factors which are considered as being in favor of allowing intervention, or of not allowing intervention. It could merely state that the State Engineer will consider whether the person seeking to intervene has shown it has a sufficient interest in the subject matter of the hearing; that it could suffer an impairment of its ability to protect that interest if it is not allowed to intervene; that its interest is not adequately represented by existing parties; and that its application to intervene is timely.

Section 23-6

TMWA does not fully understand the intent or meaning of this provision. Sometimes transcripts are, in fact, incorrect. Does this mean that the State Engineer will not accept a correction that all parties agree needs to be made?

Thank you for the opportunity to comment on this Proposed Regulation.

Sincerely yours,



Gordon H. DePaoli

GHD:hd

cc: Adam Sullivan (asullivan@water.nv.gov)
Mark Foree (mforee@tmwa.com)
John Enloe (jenloe@tmwa.com)
John Zimmerman (jzimmerman@tmwa.com)
Mike Pagni (mpagni@mcdonaldcarano.com)
Leo Drozdoff (leodrozdoff@att.net)

July 16, 2021

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*Via Electronic Mail mfairbank@water.nv.gov
mflatley@water.nv.gov*
Micheline Fairbank, Deputy Administrator
Melissa Flatley, Chief, Hearing Section
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, Nevada 89701

**Re: Truckee Meadows Water Authority's (TMWA) Comments on Proposed
Regulation Concerning Applications for Extension of Time
LCB File No. R169-20**

Dear Ms. Fairbank and Ms. Flatley:

Set forth below are TMWA's comments on the Proposed Regulation concerning applications for extension of time. As before, TMWA's comments on the Proposed Regulation are based upon its perspective as Northern Nevada's largest municipal water purveyor. On June 24, 2020, TMWA provided its written comments and background on an earlier version of this Proposed Regulation. On February 9, 2021, it provided additional written comments on a later revised version of this Proposed Regulation.

Before providing specific comments on the various sections of the Proposed Regulation, TMWA provides some general comments.

General Comments

A municipal water purveyor, like TMWA, is obligated to provide adequate water service to its customers and projected future customers upon which local governments have based their long-term economic and population growth projections as determined in accordance with master plans adopted pursuant to N.R.S. Chapter 278. While TMWA must plan for and stand ready to provide a water supply, the actual use of its water supply depends on factors over which TMWA has little or no control, including the pace of regional population growth, demands of its customers, the economy (both local and national), and entitlement and planning decisions of local governments. When, where and what type of growth should occur is solely within the land use entitlement and planning functions of cities, counties and regional planning agencies, and often subject to their political influences.

Second, TMWA has no control over the pace with which any particular developer, who has dedicated a water right to TMWA and received a will serve commitment, actually proceeds with a particular development. It also does not have access to information on work performed by

a developer on the project from one year to the next. Depending on how and when it received a dedicated water right, TMWA may have little or no history on how that water right, and extensions related to it, have evolved over time. As a result, TMWA often responds to questions 16 through 18 on current forms more broadly by describing its obligations to ensure the region has a reliable water supply for future growth and development, and that it does not control the pace or type of such development.

At present, TMWA files around 600 applications for extension of time each year. It has a staff of two persons who are responsible for those filings. If the Proposed Regulation is adopted as proposed, many more staff persons will likely be needed to assemble the information needed to comply with it.

Specific Comments

TMWA's comments follow the organization in the Proposed Regulation.

Section 4 **Beneficial Use**

It is not clear why "beneficial use" needs to be defined. Moreover, this definition is different than the definition of the same phrase in Proposed Regulation 125-20.

Section 5 **Perfect an Appropriation**

This definition seems limited to a "permit to appropriate" in the sense of a new appropriation. It should also include a permit changing an existing water right which, at least from TMWA's perspective, is not a "permit to appropriate."

Sections 8 and 9

Sections 8 and 9 would define key terms used by the legislature in N.R.S. 533.380 and 533.395. They are terms on which TMWA and other municipal water purveyors place great reliance in seeking extensions of time. In TMWA's judgment, the terms need no definition beyond what is provided in the statute. The examples provided of a "project" and an "integrated system," although not intended to be limiting, are not helpful with respect to the situation of a municipal water purveyor.

Section 9.1 **Integrated System**

From the standpoint of a water purveyor, an "integrated system" consists of numerous things, including, but not limited to, diversion facilities, transportation facilities, distribution facilities, treatment facilities and storage facilities, to name just a few. The example in the proposed definition is not what the legislature had in mind when it used that phrase, at least not with respect to a water purveyor. In TMWA's judgment, the purpose of N.R.S. 533.380(6) was to recognize that, for example, as to water purveyors, reasonable diligence existed when a

treatment plant was built or, if already built, was maintained or improved, even though no work was performed with respect to a particular permit or development at issue with a proof of beneficial use due date.

Section 9.2 Steady Application of Effort

This term is used in N.R.S. 533.380(6). With respect to a water purveyor and proofs of beneficial use, the water purveyor has little or no control over when its customers use it, and does not take affirmative actions to use the water. Its actions are related to ensuring that it has the ability to divert, treat and distribute the water when and as needed and used. This interpretation also substantially limits the phrase “steady application of effort” to only those efforts which are considered to be “meaningful” taken by the “holder of a permit.” As noted, a municipal water purveyor may not take any action, “meaningful” or otherwise, with respect to a particular permit related to a development.

The phrase “steady application of effort” originates from an early Nevada case in which the Court defined diligence as the “steady application to business of any kind, constant effort to accomplish any undertaking.” *Ophir Silver Min. Co., v. Carpenter*, 4 Nev. 534 (1868). That definition was described by Kinney in his seminal treatise on water law as “[p]robably the best definition of the word diligence . . .” *Kinney on Irrigation and Water Rights*, Vol. 2, § 735 (1912). The proposed regulatory interpretation is not consistent with N.R.S. 533.380(6) or the origin and caselaw describing steady application of effort. It does not recognize that such efforts include all elements of an integrated system regardless of whether taken before or after approval of a permit or an extension of time.

Section 10 Contents of Application for Extension of Time to File Proof of Completion of Work or Proof of Beneficial Use to Perfect an Appropriation

Section 10(1) is written to mandatorily require an application for extension of time to include at least all of the information set forth in the subsections which follow. The application “must” include the required information. Regardless of changes which may be made to the subsections which follow, Section 10(1) should be revised to recognize that some of its requirements may not apply. It could be revised to say that “to the extent applicable to the applicant, must include”

As noted above, once their work has been completed, water purveyors have little or no control over the rate at which its customers place water to beneficial use or complete their project or development. Once all infrastructure for delivery of the water is complete, the water purveyor likely will not be taking any direct or specific action with respect to the permit for which the extension is sought. On the other hand, water purveyors will continue to work diligently and take significant actions as needed with respect to their overall integrated water system, including other permits which have future due dates. The change we propose above would at least allow a municipal water purveyor, like TMWA, to respond to 10.1(b),(c), (e), (f) and (g) in much the

same manner in which it responds currently to questions on the current form. It would provide some recognition of the difference between a water purveyor which has no direct control over the timing of beneficial use of water, yet is subject to Legislative direction to develop and have water supply available to be put to future beneficial use as and when needed, and another water right holder who is directly involved with the actual use of water and has direct control over the timing and actions necessary to put the water to use.

Consistent with comments you have received from others, TMWA supports deletion of Section 10(d). It requires an applicant to provide information which will already be in your files.

This section and Section 10(e) will require significant additional information with respect to both proof of completion and proof of beneficial use. These proposed requirements will greatly increase the workload and administrative cost associated with those applications. TMWA files about 600 applications each year, and it will require substantial staff time and effort to review the history of each application to complete this section, especially where the underlying permit was previously held by another party because TMWA may not have any record of prior applications filed by that party. In that circumstance, TMWA staff would be required to spend additional time traveling to the State Engineer's Office to research permit files and summarizing prior extensions of time filed by others. This would also increase staff workload at the Division of Water Resources to review and verify that the additional information is consistent with its records. Verification would be required because the State Engineer could not simply rely on the most recent filing as an accurate summary of prior applications for extensions of time. Lastly, the State Engineer's approval of the prior applications for extensions of time is conclusive that the applicant, at the time of those prior applications, had shown good faith and reasonable diligence to perfect the application.

For the reasons referenced above, the requirements of Sections 10.1(f) and (g) are problematic for water purveyors.

Section 11 Evidence Considered to Determine Good Faith and Reasonable Diligence

Section 11.1(h)(4) should be deleted. It is beyond the power of the State Engineer to decide whether a water resource plan required by other statutes, and reviewed and approved by other governmental bodies, "includes specific and realistic plans for future development."

Section 12 Considerations in Review of Application

Like other sections, Section 12 is written as though the "applicant" is always the party in control of when the water under the permit is used to the full extent allowed by the permit. As we have noted above, that is rarely the case for a municipal water purveyor. TMWA suggests deleting Section 12.5. The status of the hydrographic basin should not be a factor in approving or not approving an extension. Persons applying for extensions should have their applications judged under the same standard, regardless of where their appropriation is located. The

problems associated with critical management areas will not be solved indirectly by denying applications for extensions of time. Those issues need to be dealt with directly.

A consideration which might be added to the Section 12 list is the mandatory or voluntary conservation of water during periods of drought or short supply.

Conclusion

TMWA recognizes the substantial time and effort that the Division of Water Resources has devoted to this effort, and appreciates this opportunity to assist the Division in meeting the Division's objectives while also addressing TMWA's concerns.

Sincerely yours,



Gordon H. DePaoli

GHD:hd

cc: Adam Sullivan (asullivan@water.nv.gov)
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STAFF REPORT

TO: Chairman and Board Members
THRU: Mark Foree, General Manager
FROM: Stefanie Morris, Manager, Water Resources
DATE: October 20, 2021
SUBJECT: Nevada Division of Environmental Protection Proposed Antidegradation and Ecological and Aesthetic Waters Regulation

SUMMARY

In fall of 2020, Nevada Division of Environmental Protection (“NDEP”) began a public process on new Ecological and Aesthetic Water (“EAW”) and Antidegradation proposed regulation. In September 2021, NDEP staff held technical workshops to discuss the proposed regulation with a goal of completing the process by the end of 2021. After the technical workshops, it appears that NDEP will adjust their timeline.

Staff supports the development of EAW and antidegradation regulation to protect Nevada’s water resources. However, as drafted the proposed regulation is vague and requires further clarification and specificity. The proposed regulation consisted of two components. The first component (Section 1) addresses the listing of extraordinary EAWs and describes a petition process. The process allows any Nevadan to nominate a surface water or segment of a surface water as an EAW. The second component (Sections 2 and 3) are the antidegradation portions. These sections describe the antidegradation policy which would be implemented as a component of the water quality standards. The proposed regulation creates four tiers of protection for all waterbodies. The four tiers are 1, 2, 2.5 and 3. Those designated as tier 3 would not allow for any new discharges.

Overview

For the EAW designation, the proposed regulation does not provide clear criteria about the information and data needed to demonstrate that a water body is an “important ecological, aesthetic, or recreational value.” The case-by-case basis proposed could be problematic because there are no data standards and there are no clear criteria. Staff recommends more detailed information about the data and criteria be included in the proposed regulation. Additionally, although NDEP has stated that the intent of classifying a waterbody as an EAW would not prevent water use, the language should be amended to be clear that it would not impair existing water rights. Finally, if an EAW

was nominated on the Truckee River downstream of the Truckee Meadows it is unclear how this would impact current upstream discharges and future discharge permits. Staff is also evaluating impacts to the requirements under the Truckee River Operating Agreement.

The antidegradation component of the proposed regulation requires additional detail. For example, it is unclear how flow for the baseline condition would be determined and how highly variable flow rates will be considered for discharge permits. Given the variable seasonal flows in the Truckee River, staff is seeking clarification on this issue. Staff also have questions about how tributary waters could be impacted by an EAW. The proposed regulation states that new or expanded discharges into tributaries will maintain and protect the higher water quality condition or unique water quality characteristic of the downstream EAW. Finally, waterbodies without sufficient water quality data would automatically be designated as a tier 2 waterbody, which means the waterbody would have higher water quality standards until sufficient data is available to justify a tier 1 designation.

STAFF RECOMMENDATION

Staff will continue to follow and engage in the process, seeking clarification on the issues described above. Staff have initiated collaboration with our regional partners to review and comment on the proposed regulations. Staff is scheduling a meeting with NDEP staff to further understand the EAW listing processes and seek clarification related to application of the antidegradation sections. As additional information becomes available, staff will bring this back to the subcommittee.

PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

R119-20 – Agency Draft Version

Revised Jan 11, 2021 per LCB comments

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

AUTHORITY: §1, NRS 445A.425

Section 1 of R119-20 describes the process to petition the SEC to classify certain surface waters of the state, which have exceptional or special water quality characteristics, ecological, aesthetic, recreational or historical value, as Ecological or Aesthetic Waters (EAWs).

Section 2 of R119-20 describes the antidegradation policy which would be implemented as a component of the water quality standards to maintain and protect water quality in all surface waters of the State. The different levels of antidegradation protection, referred to as a tier of protection, are described in Section 2. The tier protection level that will be applied will depend on the water quality conditions in the surface water, and whether the waterbody has been classified as an Ecological or Aesthetic Water (EAW) per Section 1.

Section 3 of R119-20 describes the antidegradation review procedures for implementation of the antidegradation policy as outlined in Section 2 of this regulation.

Section 4 to Section 14 of R119-20 describe resultant changes to Chapter 445A of NAC.

Section 1. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

Extraordinary Ecological or Aesthetic Waters

1. A surface water or a portion of a surface water of the state that has unique ecological or aesthetic value may be classified as an Ecological or Aesthetic Water (EAW), based on the water having some or all of the following essential attributes:

- a. The water or a segment thereof has higher water quality conditions, unique water quality characteristic, or has ecological or aesthetic significance relative to other surface waters of the state;*
- b. The water has recreational or historical significance, scenic or wilderness value, and classification as an EAW would be beneficial to the state of Nevada;*
- c. An endangered or threatened species is associated with the water and the existing water quality is essential to the maintenance and propagation of the species, or the surface water provides critical habitat for the species; or*
- d. The waterbody has an essential character or special use that makes the water an EAW.*

2. A surface water or a segment of a surface water of the state may be nominated by any Nevadan for classification as an EAW by filing Form #1 with the Commission, per NAC 445B.886. The additional information that must accompany Form #1 to nominate a water as an EAW shall include the following:

- a. A map of the surface water of the state, including the proposed upstream and downstream boundaries.*
- b. A written statement and supporting evidence to justify the nomination including specific reference to the applicable attribute(s) for an EAW classification prescribed in subsection 1.*
- c. Water quality data and information to demonstrate higher water quality conditions, unique water quality characteristic, or important ecological, aesthetic, or recreational value.*

- d. Any additional information or data, as deemed necessary by the Division, to support designation as an EAW.
- e. A discussion of the social and economic benefits and impacts associated with an EAW designation.

3. The following factors will be considered by the Commission during a public hearing when deciding to classify a surface water as an EAW and determining whether the EAW will be protected at Tier 3 or Tier 2.5 under the antidegradation policy in Section 2:

- a. The degree to which the surface water has the exceptional ecological or aesthetic attributes as listed in Section 1.1, inclusive,
- b. Whether there is the ability to manage the surface water to maintain and protect the water quality conditions, special uses, or the ecological or aesthetic value of the water,
- c. The social and economic benefits and impacts associated with an EAW classification,
- d. The public comments in support of, or in opposition to, an EAW classification,
- e. The consistency of an EAW classification with applicable water quality management plans and existing water-use activities, and
- f. Preexisting land-use activities, adjacent and within the vicinity, of the nominated surface water.

4. Per NAC 445A.122, the classification of a water as an EAW shall not prohibit the use of the water as authorized under Title 48 of NRS, nor does it entitle an appropriator to require that the source meet his or her particular requirements for water quality.

5. The classification of a water as an EAW shall not prohibit or alter activities, which are authorized under a state or federal permit, related to management and maintenance of structures and devices in and on the water.

6. The following surface waters are classified as EAWs with the associated antidegradation protection level:

Surface Water Name	Region	Water Quality Standards	Antidegradation Tier Protection Level (per Section 2)	Date
Lake Tahoe (State of NV)	Truckee Region	NAC 445A.1626	Tier 3	(date approved by SEC)

Section 2. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

Antidegradation Policy. The following antidegradation policy applies to all surface waters of the State. This policy must not be used to prohibit use of the water as authorized under Title 48 of NRS, nor entitle an appropriator to require that the source meet his or her particular requirements for water quality. A tier of protection, determined on a parameter-by-parameter basis, will be applied to maintain and protect existing water quality conditions.

1. **Tier 3 protection.** The higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value shall be maintained and protected in a surface water or segment thereof that has been classified as an EAW, as defined in Section 1. This tier of protection prevents activity any or new or expanded point-source discharge, as defined in Section 3.1(b), that would result in new or increased sources of pollution or water quality impacts. Any new or expanded point-source discharge upstream of the EAW will not degrade the higher quality condition, alter or negatively impact the unique water quality characteristic or important ecological,

aesthetic, or recreational value of the EAW. Tier 3 protection requirements will not apply to the following situations:

- a. Discharges of point sources authorized by the Division prior to classification as an EAW.*
 - b. The Division determines activities that may result in temporary or limited lowering of the water quality are necessary for long-term ecological or water quality benefit, or to accommodate public health and safety or other allowable discharges, as determined by the Division. Such activities shall be non-recurring and necessary controls will be implemented to minimize impacts to water quality and water quality values.*
- 2. Tier 2.5 protection. The higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value shall be maintained and protected in a surface water or segment thereof that has been classified as an EAW, as defined in Section 1, that is not subject to Tier 3 protection requirements. This tier of protection does not preclude a new or expanded point-source discharge, as defined in Section 3.1(b), where such sources would have no effect on the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW. Tier 2.5 protection requirements will not apply to the following situations:*
 - a. Discharge of point sources authorized by the Division prior to classification as an EAW.*
 - b. The Division determines activities that may result in temporary or limited lowering of the water quality are necessary for long-term ecological or water quality benefit, or to accommodate public health and safety or other allowable discharges, as determined by the Division. Such activities shall be non-recurring and necessary controls will be implemented to minimize impacts to water quality and water quality values.*
- 3. Tier 2 protection. Where the existing quality conditions in a surface water or segment thereof are higher than the applicable water quality standards to support the designated beneficial uses, the higher water quality shall be maintained and protected. Lowering of the existing quality in the surface water may be allowed, by the Commission, based on the following findings:*
 - a. The lower water quality allowed is necessary to accommodate economic or social benefit in the area where the surface water is located and treatment technology is not economically viable,*
 - b. Water quality will not be degraded below the applicable water quality standards that protect the designated beneficial uses,*
 - c. The lower water quality allowed will not cause or contribute to exceedance of water quality standard that has been established for a downstream surface water,*
 - d. The new or increased source of pollution will not cause further degradation of water quality when existing dischargers are not in compliance with regulatory requirements and permit conditions unless enforcement and/or permit compliance actions have been initiated to achieve compliance. The highest and best degree of pollution prevention, control and treatment available under existing technology and which is cost-effective is applied to new and existing point sources to achieve statutory and regulatory permitting requirements, and*
 - e. Cost-effective and reasonable best management practices for diffuse source pollution control that are established and required under State authority are implemented when diffuse sources contribute similar pollutants as the new or increased source of pollution.*
- 4. Tier 1 protection. The level of water quality necessary to protect and ensure a continuation of the designated beneficial uses shall be maintained in all surface waters of the state.*

Section 3. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

- 1. Antidegradation Implementation Procedures: An antidegradation review analysis would need to be provided to the Division when:*
 - a. A new point-source discharge is proposed;*

- b. *At the time of permit renewal or permit modification, if there is a request for an expanded point-source discharge. An expanded point-source discharge would include the following: an increased limit of flow, in gallons per day, of the discharge authorized by the permit, a change in the pollutant composition of the discharge requiring different effluent limitations, or a relocation of the discharge outfall and the relocation represents a significant change based on an evaluation by the Division; or*
 - c. *A new, modified or renewed zone of mixing is requested for a receiving water with parameters that have Tier 2 protection, to be evaluated at the discretion of the Division pursuant to NAC 445A.298 to NAC 445A.302, inclusive.*
2. *Antidegradation review steps:*
- a. *The antidegradation review will be conducted on a parameter-by-parameter basis. The parameters of concern (i.e., pollutants of concern) that are expected to be present in the regulated point-source discharge must be identified.*
 - b. *For the identified parameters of concern, the baseline water quality for each parameter in the receiving water must be determined. Available water chemistry data used to characterize baseline water quality conditions must be of a sufficient quality and represent the chemical conditions of the receiving water upstream of the proposed discharge location.*
 - c. *When no baseline water quality data exist or there are insufficient data to characterize existing water quality for the identified parameters of concern, the Division may require that baseline water quality data be included with the permit application seeking to discharge to a water of the State, pursuant to NAC 445A.230. Samples used to provide baseline water quality data must be representative and statistically independent, and be collected from a location upstream of the proposed discharge. A sampling plan describing the location, schedule, and method of sampling and analysis must be approved by the Division prior to collecting baseline water quality data.*
 - d. *Based on characterization of baseline water quality, the appropriate antidegradation level of tier protection, pursuant to Section 2, will be assigned to each parameter of concern.*
 - e. *The antidegradation review analysis to be provided to the Division as part of the permit application or permit renewal will assess the probable impact of a proposed or expanded point-source discharge, as defined in 3.1(b), on the quality of the receiving water by evaluating whether the levels of discharged pollutants will meet or be better than the corresponding tier protection levels in the receiving water, as provided in Section 3.2(d).*
 - f. *For purposes of this Section, the term “parameter of concern” means a parameter with either a numeric or narrative water quality standard as contained in NAC 445A.121 to 445A.2234, inclusive.*
 - g. *For purposes of this Section, the term “baseline water quality” means the background level of each parameter in the receiving water, defined as the 95th percentile value calculated for each parameter, using chemical data from a minimum of three, statistically independent samples.*
3. *Tier 3 antidegradation level*
- a. *The higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value at the time that a receiving water is classified as an EAW and assigned a Tier 3 antidegradation protection level, as described in Section 2, must be maintained and protected.*
 - b. *Existing point-source discharges as authorized by the Division at the time an EAW is approved by the Commission will be exempt from Tier 3 antidegradation protection requirements.*
 - c. *An activity or a new or expanded point-source discharge, as defined in Section 3.1(b), except temporary and limited discharges as listed in Section 2.1(b), that would result in a new or*

increased source of pollution or water quality impact in an EAW assigned a Tier 3 protection level is not allowed.

- d. When a new or expanded point-source discharge, as defined in 3.1(b), is proposed to a tributary water to an EAW that has been assigned Tier 3 protection, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value in the downstream EAW will be maintained and protected.*

4. Tier 2.5 antidegradation level

- a. For EAWs requiring Tier 2.5 protection, as described in Section 2, higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value must be maintained and protected.*
- b. New or expanded point-source discharges, as defined in Section 3.1(b), may be authorized by the Division when the antidegradation review analysis shows that such discharges will not alter or negatively impact the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW.*
 - i. Where the EAW classification is based on higher water quality conditions which may include adopted RMHQs, the antidegradation review analysis will evaluate each parameter of concern in the discharge to determine whether the higher water quality conditions in the Tier 2.5 water would be maintained and protected if the proposed or expanded point-source discharge is authorized.*
 - ii. Where the EAW classification is based on a unique water quality characteristic, or important ecological, aesthetic, or recreational value, a demonstration must be made to the Division that the attributes that formed the basis of the EAW classification would be maintained and protected if the new or expanded point-source discharge is authorized.*
- c. When a new or expanded point-source discharge is proposed in a tributary water to an EAW that has been assigned Tier 2.5 protection, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value in the downstream EAW will be maintained and protected.*

5. Tier 2 antidegradation level

- a. Tier 2 protection is provided for parameters of concern when the receiving water baseline water quality for the parameter is better than the applicable water quality standard, or an RMHQ has been promulgated for the parameter in the receiving water.*
- b. For each parameter of concern requiring Tier 2 protection, the antidegradation review analysis will evaluate whether the higher water quality conditions in the receiving water would be maintained and protected if the proposed or expanded point-source discharge is authorized.*
- c. A point-source discharge would not cause degradation of higher water quality conditions if the concentration of each parameter of concern in the effluent at the point of discharge was at or better than the corresponding baseline water quality condition or RMHQ value in the receiving water. No additional analysis is required, and a permit may be issued by the Division to authorize the point-source discharge.*
- d. A point-source discharge could cause degradation of higher water quality conditions if the concentration of a parameter of concern in the effluent is not better than the corresponding baseline water quality condition or RMHQ value in the receiving water. When this occurs,*

additional analysis and evaluation pursuant to Subsection 6 and 7 is required to be provided to the Division before the point-source discharge can be authorized.

- e. Reissuance of a permit that maintains existing permitted flow, effluent limitations and other conditions and requirements as the initial permit issuance will be viewed as not causing further degradation of water quality as determined by the Division, and will not be subject to a Tier 2 antidegradation review and evaluation, unless a zone of mixing is associated with the permit. For a receiving water with parameters that have Tier 2 protection, the zone of mixing will be evaluated during the permit renewal pursuant to NAC 445A.298 to NAC 445A.302, inclusive, and may be subject to antidegradation review analysis.*

6. Tier 1 antidegradation level

- a. Tier 1 protection is provided for a parameter of concern when the receiving water quality level for the parameter is not better than the applicable water quality standard.*
- b. Tier 1 protection ensures that the discharge does not exceed the applicable water quality standards, cause additional degradation of the receiving water, or exceed waste load allocations for waters with approved total maximum daily load (TMDL) values.*
- c. If a TMDL has been approved for the receiving water and allocations exist for the parameter of concern, the waste load allocation of the TMDL would regulate the concentration of the parameter of concern in the discharge.*
- d. If the receiving water is impaired for a parameter of concern and a TMDL has not been developed for the pollutant, the effluent permit limit for the parameter of concern will be based on the applicable water quality standard. When a TMDL is subsequently approved, the effluent limitation may be modified by the Division for cause as provided in NAC 445A.261 .*

7. Determining the Necessity of Degradation

- a. When the Tier 2 antidegradation review analysis performed under subsection 5 indicates that the proposed or expanded point-source discharge will result in degradation of water quality for a parameter of concern requiring Tier 2 protection, the project proponent or permit applicant shall provide project justification and an analysis of alternatives to the Commission for the Division to receive authorization to permit the proposed discharge.*
- b. The alternatives analysis shall address economic or social considerations and an analysis of the highest and best degree of waste treatment available under existing technology, consistent with the best practice in the particular field under the conditions applicable, and reasonably consistent with the economic capability of the project, that can reduce or eliminate the degrading aspect of the discharge. Alternative pollution-reduction strategies include, but are not limited to, different treatment techniques, different discharge locations, or process changes that would improve discharge quality.*
- c. The alternatives analysis should be comprehensive and consider amount of degradation reduced, cost-effectiveness of pollutant removal, cost of pollution reduction versus overall environmental gain and affordability of alternatives. An alternatives analysis completed as requirement of other permitting activities or environmental reviews could be used by the Division for antidegradation review purposes.*

- d. The degradation of water quality in a receiving water may be authorized by the Commission if there are no water quality control alternatives identified that would result in no degradation or less degradation or that are determined to be economically or technologically feasible.*
- 8. Before the Commission authorizes the Division to issue a permit for a proposed discharge that would cause degradation of water quality, the project proponent or permit applicant will be required to provide justification of economic and social importance of the proposed activity.*
 - a. NRS 445A.565 allows lowering of higher water quality conditions only after important economic and social benefits have been demonstrated by the applicant, and the Commission has agreed that lowering the quality of the receiving water is necessary for economic and social benefits.*
 - b. In allowing such degradation, the Commission will ensure that the level of the parameter of concern in the discharge is not greater than the water quality standard level necessary to protect designated beneficial uses adopted pursuant to NRS 445A.520.*
 - i. A project that is socially justified is one that is important to the social development of the local community in at least one aspect (e.g., population growth or job growth), or results in improvements of important community service needs (e.g., construction of new wastewater treatment plant, public water supply project, or improved transportation infrastructure).*
 - ii. An economically justified project will promote economic development of the local community.*
 - iii. A more in-depth analysis would be required to show the economic importance than a social justification and would cover how the costs associated with water quality degradation are offset by benefits to the community. A simplified cost-benefit analysis may be required.*
 - iv. A public hearing before the Commission will be required to authorize the Division to issue a permit that will result in degradation of the better water quality conditions for a parameter subject to Tier 2 protection.*
 - v. Before degradation of high water quality conditions is allowed, the Division will evaluate whether there are existing point-source compliance problems in the waterbody, and if the proposed new or expanded point-source discharge will contribute similar pollutants resulting in further degradation of water quality conditions. The proposed new or expanded point-source would not be allowed to lower quality unless it can be demonstrated that compliance measures are being developed with the appropriate regulatory authority to resolve any existing compliance problems.*
 - vi. Where diffuse source pollution is known to be contributing to lower water quality in the receiving water with respect to a parameter of concern in the new or expanded point source discharge, the Division will verify that cost-effective and reasonable best management practices (BMPs) or other strategies that are required under the Division's diffuse source pollution control program and regulations are implemented.*
- 9. Antidegradation review of general discharge permits.*
 - a. The Division shall conduct an antidegradation review of a general permit at the time the permit is issued or renewed.*
 - b. Permit conditions and requirements will be incorporated in a general permit to ensure the class of facilities covered under the general permit minimize degradation to water quality and comply with antidegradation requirements.*
 - c. A person seeking authorization to discharge under a general permit will be presumed to be meeting antidegradation requirements if they comply with all of the permit conditions and*

requirements. If the notice of intent supplied pursuant to NAC 445A.268 indicates the receiving water will be an EAW, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW will be maintained and protected. The Division may authorize the discharge to an EAW under a general permit or direct the applicant to apply for an individual permit as provided in NAC 445A.269, as necessary.

10. Antidegradation review of a municipal separate storm sewer system (MS4) stormwater permit.

- a. A permittee covered by an MS4 permit will be presumed to be meeting antidegradation requirements if the permittee complies with the permit conditions and requirements, including developing a stormwater management plan containing BMPs, as defined in NAC 445A.306, to prevent, eliminate or control the level of pollutants in stormwater discharges.*
- b. If the MS4 will discharge to an EAW, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW will be maintained and protected. .*

DRAFT

Section 4. NAC 445A.122 is hereby amended to read as follows:

NAC 445A.122 Standards applicable to beneficial uses. ([NRS 445A.425](#), [445A.520](#))

1. The following standards are intended to protect both existing and designated beneficial uses and must not be used to prohibit the use of the water as authorized under title 48 of NRS:

- (a) Watering of livestock. The water must be suitable for the watering of livestock without treatment.
- (b) Irrigation. The water must be suitable for irrigation without treatment.
- (c) Aquatic life. The water must be suitable as a habitat for fish and other aquatic life existing in a body of water. This does not preclude the reestablishment of other fish or aquatic life.
- (d) Recreation involving contact with the water. There must be no evidence of man-made pollution, floating debris, sludge accumulation or similar pollutants.
- (e) Recreation not involving contact with the water. The water must be free from:
 - (1) Visible floating, suspended or settled solids arising from human activities;
 - (2) Sludge banks;
 - (3) Slime infestation;
 - (4) Heavy growth of attached plants, blooms or high concentrations of plankton, discoloration or excessive acidity or alkalinity that leads to corrosion of boats and docks;
 - (5) Surfactants that foam when the water is agitated or aerated; and
 - (6) Excessive water temperatures.
- (f) Municipal or domestic supply. The water must be capable of being treated by conventional methods of water treatment in order to comply with Nevada's drinking water standards.
- (g) Industrial supply. The water must be treatable to provide a quality of water which is suitable for the intended use.
- (h) Propagation of wildlife. The water must be suitable for the propagation of wildlife and waterfowl without treatment.
- (i) Waters of extraordinary ecological or aesthetic value. The unique ecological or aesthetic value of the water must be maintained, *pursuant to Section 1.*
- (j) Enhancement of water quality. The water must support natural enhancement or improvement of water quality in any water which is downstream.

2. This section does not entitle an appropriator to require that the source meet his or her particular requirements for water quality.

Section 5. NAC 445A.123 is hereby amended to read as follows:

NAC 445A.123 Classification and reclassification of waters. ([NRS 445A.425](#), [445A.520](#))

1. Stream standards and classifications in [NAC 445A.123](#) to [445A.2234](#), inclusive, do not preclude the Commission from establishing standards and classifications for additional public waters nor reclassifying the waters covered by those sections.

2. The Commission will consider classification of a body of public water not contained in [NAC 445A.123](#) to [445A.2234](#), inclusive, upon a request for a permit to discharge into that body of water.

3. The above sections also include the classification and reclassification by the Commission of a body of public water as an Ecological or Aesthetic Water (EAW), pursuant to Section 1.

Section 6. NAC 445A.228 is hereby amended to read as follows:

NAC 445A.228 Requirement; exemptions. ([NRS 445A.425](#), [445A.465](#))

1. Except as otherwise provided in subsection 2, a person shall not discharge a pollutant from a point source into any waters of the State without obtaining a permit from the Department. *An antidegradation review analysis, pursuant to Section 3, of the point source discharge will be required prior to a permit being issued.*

2. Although not exempted from complying with all other applicable laws, rules and regulations regarding pollution, the following are specifically exempted from the requirements to obtain a permit:

(a) Persons utilizing an individual sewage disposal system or other sewage disposal system that uses a soil absorption system for the treatment and disposal of domestic wastes, if the system is approved and is installed, operated and maintained in accordance with the rules and regulations and other requirements of the district health departments, the State Board of Health or the Division or other administrative authority, as authorized by [NAC 445A.950](#) to [445A.9706](#), inclusive, as applicable. This exemption does not preclude the possibility that health authorities, the Division or other administrative authority will require permits.

(b) Except as otherwise provided in this paragraph, persons discharging pollutants into a publicly owned or privately owned sewerage system, if the owner of such sewerage system has a valid permit from the Department. In such cases, the owner of the sewerage system assumes ultimate responsibility for controlling and treating the pollutants which he or she allows to be discharged into the system. The Department may require an industrial user who discharges pollutants into a publicly owned treatment works which does not have an approved pretreatment program to obtain a permit pursuant to [NAC 445A.257](#).

(c) Discharges of pollutants from agricultural and silvicultural activities, including, without limitation, irrigation return flow and runoff from orchards, cultivated crops, pastures, rangelands and forest lands, except that this exemption does not apply to the following:

(1) Discharges from facilities in which crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season and that confine animals if the facilities contain, or at any time during the previous 12 months contained, for a total of 30 days or more, any of the following types of animals at or in excess of the number listed for each type of animal:

- (I) Cattle, veal calves or a pair consisting of a cow and a calf, 1,000;
- (II) Mature dairy cattle (whether milkers or dry cows), 700;
- (III) Swine weighing over 55 pounds, 2,500;
- (IV) Swine weighing 55 pounds or less, 10,000;
- (V) Horses, 500;
- (VI) Sheep or lambs, 10,000;
- (VII) Turkeys, 55,000;
- (VIII) Chickens, if the animal confinement facility has a liquid manure handling system, 30,000;
- (IX) Chickens, other than laying hens, if the animal confinement facility does not have a liquid manure handling system, 125,000;
- (X) Laying hens, if the animal confinement facility does not have a liquid manure handling system, 82,000;
- (XI) Ducks, if the animal confinement facility has a liquid manure handling system, 5,000; or
- (XII) Ducks, if the animal confinement facility does not have a liquid manure handling system, 30,000.

(2) Discharges from production facilities for aquatic animals.

(3) Discharges of irrigation return flow, such as tailwater, tile drainage, surfaced groundwater flow or bypass water, operated by public or private organizations or natural persons if the source of water is effluent from a treatment works.

(4) Discharges from any agricultural or silvicultural activity which have been identified by the Administrator or the Director as a significant contributor of pollution.

Section 7. NAC 445A.230 is hereby amended to read as follows:

NAC 445A.230 Application for permit. ([NRS 445A.425](#), [445A.465](#))

1. Except as otherwise provided in subsection 2, any person wishing to commence future discharges of pollutants must file a complete permit application on forms provided by the Department, not less than 180 days in advance of the date on which the person desires to commence the discharge of pollutants, unless the Department has granted permission for a later date.

2. The owner of a facility described in subparagraph (4) of paragraph (c) of subsection 2 of [NAC 445A.228](#) must file a complete permit application on forms provided by the Department not later than 90 days

after receiving notification of having been identified by the Administrator or the Director as a significant contributor of pollution.

3. The Director:

- (a) May require the submission of additional information after a permit application has been filed; and
- (b) Shall ensure that if a permit application is incomplete or otherwise deficient, processing of the application is not completed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency.

(c) May require that baseline water quality data be included with the permit application to adequately characterize existing water quality of the receiving water and allow for an antidegradation review analysis to be completed, pursuant to Section 3.

4. If, upon review of an application, the Department determines that a permit is not required, the Department shall notify the applicant in writing of this determination. The notification constitutes final action by the Department on the application.

Section 8. NAC 445A.233 is hereby amended to read as follows:

NAC 445A.233 Determination of application prior to public notice.

1. The Department shall formulate and prepare tentative determinations regarding permit applications in advance of public notice of the proposed issuance or denial of the permit. The tentative determinations must include at least the following:

- (a) A proposed determination to issue or deny a permit for the discharge described in the application; and
- (b) If the determination proposed in paragraph (a) is to issue the permit, the following additional tentative determinations must be made:

(1) The proposed effluent limitations, identified pursuant to [NAC 445A.243](#), for those pollutants proposed to be limited;

(2) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations, identified pursuant to [NAC 445A.244](#); ~~and~~

(3) A brief description of any other proposed special conditions, apart from those required in [NAC 445A.229](#), [445A.243](#), [445A.244](#), [445A.245](#), [445A.247](#), [445A.256](#) to [445A.259](#), inclusive, and [445A.262](#), which will have a significant impact upon the discharge described in the application; *and*

(4) The antidegradation review findings developed in accordance with Section 3 and the determination of the Commission where lowering of higher water quality conditions in a receiving water is proposed.

2. The Director shall organize the tentative determinations prepared pursuant to subsection 1 into a draft permit.

Section 9. NAC 445A.236 is hereby amended to read as follows:

NAC 445A.236 Fact sheets. ([NRS 445A.425](#), [445A.465](#))

1. For every discharge for which public notice was required pursuant to [NAC 445A.234](#), the Director shall prepare and, following the public notice, shall send upon request to any person a fact sheet with respect to the application described in the public notice. The contents of such fact sheets must include at least the following information:

- (a) A sketch or detailed description of the location of the discharge described in the application;
- (b) A quantitative description of the discharge described in the application which includes at least the following:

(1) The rate or frequency of the proposed discharge and, if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;

(2) For thermal discharges subject to limitation under the Act, the average summer and winter temperatures in degrees Fahrenheit; and

(3) The average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under § 301, 302, 306 or 307 of the Act, 33 U.S.C. § 1311, 1312, 1316 or 1317, and regulations published thereunder;

(c) The tentative determinations required under [NAC 445A.233](#);

(d) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and limitations applied to the proposed discharge; and

(e) A fuller description of the procedures for the formulation of final determinations than that given in the public notice including:

(1) The 30-day comment period required by subsection 3 of [NAC 445A.234](#);

(2) Procedures for requesting a public hearing and the nature thereof; and

(3) Any other procedures by which the public may participate in the formulation of the final determinations.

(f) Documentation of the antidegradation review findings developed, in accordance with Section 3, for the proposed discharge. Where lowering of higher water quality conditions in a receiving water will result, the documentation will include sufficient information and rationale to support the determination of the Commission to allow lower water quality.

2. The Director shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

Section 10. NAC 445A.241 is hereby amended to read as follows:

NAC 445A.241 Duration and reissuance of permits. ([NRS 445A.425](#), [445A.465](#), [445A.495](#))

1. The duration of permits is fixed and does not exceed 5 years. The expiration date must be recorded on each permit issued. A new application must be filed with the Department to obtain renewal or modification of a permit. Applications for renewal must be filed at least 180 days prior to expiration of the permit.

2. For the reissuance of a permit, the same procedures must be followed as for the initial issuance of a permit. *Reissuance of a permit that maintains existing permitted flow, effluent limitations and other conditions and requirements as the initial permit issuance will be exempt from an antidegradation analysis, as described in Section 3.*

3. A person who holds an expired permit and who has submitted a timely application for renewal of the permit in the manner set forth in subsection 1 may continue to conduct the permitted activity in accordance with the terms and conditions of the expired permit until the Department takes final action on the application unless:

(a) The Department determines that the permittee is not in substantial compliance with the terms and conditions of the expired permit or with a compliance schedule designed to bring the permittee in compliance with the terms and conditions of the expired permit;

(b) The Department, as a result of an action or the failure to act of the permittee, has been unable to take final action on the application on or before the expiration date of the permit; or

(c) The permittee has submitted an application with major deficiencies or has failed to supplement properly the application in a timely manner after being informed of deficiencies.

Section 11. NAC 445A.243 is hereby amended to read as follows:

NAC 445A.243 Establishment of effluent limitation. ([NRS 445A.425](#), [445A.465](#), [445A.500](#)) In establishing an effluent limitation to carry out the policy of this State set forth in [NRS 445A.305](#), consideration must be given to, but is not limited by, the following:

1. The effect of the discharge on the receiving waters and its beneficial use.

2. The need for standards that specify by chemical, physical, biological or other characteristics the extent to which pollution by various substances will not be tolerated.

3. Standards for water quality and effluent limitations promulgated from time to time by the United States Environmental Protection Agency, including the following:

- (a) Effluent limitations under §§ 301 and 302 of the Act, 33 U.S.C. §§ 1311 and 1312.
- (b) Standards of performance for new sources under § 306 of the Act, 33 U.S.C. § 1316.
- (c) Effluent standards, effluent prohibitions and pretreatment standards under § 307 of the Act, 33 U.S.C. § 1317.

(d) Any more stringent limitations, including those:

(1) Necessary to meet standards for water quality and treatment or schedules of compliance, established pursuant to any state law or regulation;

(2) Necessary to meet any other federal law or regulation; or

(3) Required to carry out any applicable standards for water quality, *and the antidegradation policy as described in Section 2.*

È Such limitations must include any legally applicable requirements necessary to carry out total maximum daily loads established pursuant to § 303(d) of the Act, 33 U.S.C. § 1303(d), and incorporated in the continuing planning process approved under § 303(e) of the Act, 33 U.S.C. § 1303(e), and any regulations and guidelines issued thereunder.

(e) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to § 208(b) of the Act.

4. In the application of water quality standards and limitations and other legally applicable requirements pursuant to subsection 3, the Director shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of mass, except quantitative limitations that are not appropriately expressed in terms of mass, including, without limitation, pH, temperature and radiation.

Section 12. NAC 445A.266 is hereby amended to read as follows:

NAC 445A.266 Issuance of permit; notice of intent to engage in activity; location of facility approved to operate under permit; requirements for discharge. ([NRS 445A.425](#), [445A.465](#), [445A.475](#))

1. A general permit may be issued for:

(a) A discharge;

(b) The reuse or ultimate disposal of treated wastewater and sludge; or

(c) Rolling stock for work in waters of this State, including, but not limited to, dredging or filling, bank stabilization or restoration, channel clearance, construction of irrigation diversions or pipe crossings, and the clearance of vegetation, debris or temporary obstructions.

(d) An antidegradation review analysis of a general permit, pursuant to Section 3, will be conducted at the time the permit is issued or renewed.

2. The Department will process a notice of intent to engage in an activity for which a general permit has been issued pursuant to this section not later than 60 days after the date on which the Department receives the completed notice of intent and the required fees, unless the Administrator of the Division determines that it is in the public interest to hold a public hearing regarding the notice of intent. Upon making such a determination, the Administrator of the Division shall promptly notify the person who submitted the notice of intent that a public hearing will be held regarding the notice of intent.

3. A facility discharging any pollutant into any waters of this State must be located within:

(a) An area designated for water quality planning;

(b) A sewer district or a sewer authority;

(c) The political boundaries of a city or county;

(d) A state or county highway system; or

(e) Any other division or combination of boundaries deemed appropriate by the Director, to be approved to operate under a general permit.

4. Discharges from a facility described in subsection 3 must:

(a) Involve the same or substantially similar types of operations;

(b) Discharge the same types of pollutants or engage in the same types of use or disposal;

- (c) Require the same effluent limitations, operating conditions or standards for reuse or disposal;
- (d) Contain storm water;
- (e) Require the same or similar monitoring; or
- (f) In the opinion of the Director, be more appropriately regulated by a general permit than by an individual permit.

5. If the discharge to be authorized under a general permit will be to an EAW, a demonstration must be made to the Division that the higher water quality condition, unique water quality characteristic, or important ecological, aesthetic, or recreational value of the EAW will be maintained and protected. The Division may authorize the discharge to an EAW under a general permit or direct the applicant to apply for an individual permit as provided in NAC 445A.269, as necessary.

6. ~~5.7~~ A general permit may not include a facility that holds an individual permit.

Section 13. NAC 445A.298 is hereby amended to read as follows:

NAC 445A.298 Establishment by Director. (NRS 445A.425, 445A.465)

1. The Director shall establish a zone of mixing so that the standards for quality of water for individual parameters determined to be appropriate pursuant to subsection 1 of NAC 445A.297 for the receiving water, but in no case including esthetic and acute toxicity values, may be relaxed within the zone of mixing.

2. In determining the size of a zone of mixing, each application must be reviewed on a case-by-case basis taking into consideration the quality of effluent of wastewater discharged and the nature and condition of the receiving water, including the effects of the effluent or wastewater on the designated or actual beneficial uses of the receiving water, ~~and~~ standards for quality of water *and the antidegradation review analysis as described in Section 3.*

Section 14. NAC 445A.302 is hereby amended to read as follows:

NAC 445A.302 Renewal. (NRS 445A.425, 445A.465)

1. Any zone of mixing may be granted or renewed for periods not exceeding 5 years.

2. Applications for renewal:

(a) Must be made before the expiration of the period concerning the zone of mixing.

(b) May be granted by the Director if the application for renewal has met all of the conditions specified for the immediately preceding zone of mixing granted pursuant to NAC 445A.295 to 445A.302, inclusive, *and satisfies the requirements of the antidegradation review analysis when higher water quality conditions are associated with the zone of mixing.*