

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R099-14

Effective October 24, 2014

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

AUTHORITY: §§1 and 3, NRS 445A.270 and 445A.860; §§2, 4-11 and 15-26, NRS 445A.270; §§12-14, NRS 445A.270 and 445A.295.

A REGULATION relating to public water systems; revising provisions relating to the Account for the Revolving Fund and applications for financial assistance from the Account; revising provisions applicable to the recipients of such assistance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Account for the Revolving Fund, from which loans and other forms of financial assistance may be provided to finance the construction, renovation, modification and expansion of public water systems in this State. (NRS 445A.230, 445A.255, 445A.275) **Sections 1-3 and 8** of this regulation make technical changes to certain existing regulations relating to the Account. **Section 3** also revises provisions relating to the costs of a water project for which an applicant may receive a loan from the Account.

Existing regulations require the Division of Environmental Protection of the State Department of Conservation and Natural Resources annually to develop a statewide priority list of water projects to be considered for financial assistance from the Account. (NAC 445A.67567-445A.67571) **Sections 4-6** of this regulation revise provisions relating to the priority list.

After a priority list is approved by the Board for Financing Water Projects, existing regulations require each applicant whose water project is on the list to file a letter of intent signifying its intention to proceed with an application for assistance for the project or defer action on the application. (NAC 445A.67577) **Sections 10 and 11** of this regulation revise provisions relating to the letter of intent, and **section 7** of this regulation makes a conforming change.

Existing regulations establish a process of environmental review for a proposed water project, pursuant to which potential environmental issues associated with the project are identified and evaluated. (NAC 445A.6758-445A.67612) **Sections 12 and 13** of this regulation revise provisions relating to public comment on intended findings by the Division that a project is eligible for a categorical exclusion or will have no significant impact, meaning that no further

environmental review will be required for the project. **Section 14** of this regulation revises provisions governing the submission of a draft environmental impact statement by an applicant.

Sections 20 and 24 of this regulation make technical changes to provisions relating to accounting standards and contracting with disadvantaged businesses in connection with a water project.

Existing regulations impose certain requirements upon a recipient of financial assistance from the Account relating to the use of value engineering, peer review, user charges and certain rate structures. (NAC 445A.67631-445A.67633) **Sections 21-23** of this regulation revise those provisions to make them applicable to an applicant for assistance.

After the Board for Financing Water Projects has acted upon an application for a loan from the Account, existing regulations require the Division to notify the applicant of the Board's action. (NAC 445A.6762) **Section 26** of this regulation repeals this requirement, and **section 17** of this regulation makes a conforming change. Existing regulations also require that certain reports be submitted to the Division during the construction of a water project financed by a loan from the Account. (NAC 445A.67625) **Section 26** also repeals those provisions.

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

“Disadvantaged community” means an area served by a public water system in which the median household income is less than 80 percent of the state median household income.

Sec. 2. NAC 445A.6751 is hereby amended to read as follows:

445A.6751 As used in NAC 445A.6751 to 445A.67644, inclusive, unless the context otherwise requires, the words and terms defined in NAC 445A.67511 to 445A.67557, inclusive, ***and section 1 of this regulation*** have the meanings ascribed to them in those sections.

Sec. 3. NAC 445A.67561 is hereby amended to read as follows:

445A.67561 1. The Division shall provide an applicant with a short-term or long-term loan from the Account for the Revolving Fund for a water project pursuant to the criteria set forth in this chapter and chapter 445A of NRS.

2. The Division shall determine the eligibility of a water project to receive a loan from the Account for the Revolving Fund before the Division establishes the priority list pursuant to NAC 445A.67567 to 445A.67571, inclusive.

3. Any change made by an applicant to the design of his or her proposed water project which the applicant makes after the Division has determined that the water project is eligible for a loan, but before the Board for Financing Water Projects has committed to a loan contract, must be reported by the applicant to the Division not later than 15 days after the applicant changes the design. The Division may decide that a water project is no longer eligible for a loan based upon the design changes.

4. Water projects that are eligible for a loan from the Account for the Revolving Fund are limited to systems which are not owned by the Federal Government that are:

- (a) Publicly or privately owned community water systems; or
- (b) Nonprofit, noncommunity water systems.

5. Water projects that are eligible for a loan from the Account for the Revolving Fund include, without limitation, water projects which:

- (a) Facilitate compliance with the health protection objectives of 42 U.S.C. § 300j-12(a)(2);
- (b) Facilitate compliance with NAC 445A.453 and 445A.455;
- (c) Replace aging infrastructure, if such infrastructure is needed to maintain compliance with

or to further the public health protection goals of:

- (1) The Safe Drinking Water Act;
- (2) The provisions of NAC 445A.450 to 445A.540, inclusive; or
- (3) The provisions of NAC 445A.65505 to 445A.6731, inclusive;
- (d) Consolidate water supplies; or

(e) Facilitate the purchase of a portion of the capacity of another system to improve the cost efficiency of a public water system.

6. An applicant may be eligible to receive a loan from the Account for the Revolving Fund if the water project involves:

(a) The replacement, rehabilitation or enhancement of an existing system for the collection, pumping, treatment, storage or distribution of water, or portions thereof, which is deemed necessary by the Division for the integrity and performance of the public water system to satisfy the requirements of NAC 445A.450 to 445A.6731, inclusive; or

(b) The creation of a new distribution system designed primarily to serve residents within an existing water system who are using domestic wells which have public health or water quality problems. Such a distribution system must provide sufficient existing or planned capacity for the development, treatment and storage of the new water of the system. The applicant shall provide assurances acceptable to the Division that the existing population in the service area of the public water system currently obtaining its water from domestic wells will connect to the new distribution system within a reasonable time after completion of the water project.

7. The Division shall decide on a case-by-case basis the costs for which an applicant may receive a loan. The costs of a water project for which an applicant may receive a loan from the Account for the Revolving Fund include, without limitation, costs for:

- (a) Planning and design;
- (b) Construction management, including, without limitation, inspection;
- (c) Water project facilities;
- (d) Land and rights-of-way or easements that are necessary to complete the water project;

(e) The preparation of any environmental documents that the Division or any other state or federal agency requires; ~~and~~

(f) Legal and financial services ~~and~~; *and*

(g) The administration of a water project, including, without limitation, expenses relating to draws on the loan and the preparation of certified payroll reports.

8. The Division may extend the term of a long-term loan to 30 years under special conditions for a disadvantaged community.

9. As used in this section:

(a) ~~“Disadvantaged community” means an area served by a public water system in which the median household income is less than 80 percent of the state median household income.~~

~~(b)~~ “Domestic use” has the meaning ascribed to it in NRS 534.013.

~~(c)~~ (b) “Domestic well” means a well that supplies water for domestic use.

Sec. 4. NAC 445A.67566 is hereby amended to read as follows:

445A.67566 1. At least annually, the Division shall solicit from public water systems:

(a) Proposals in the form of preapplications for water projects; and

(b) Written requests, from each applicant whose water project is currently on a priority list, to be included on the next priority list. If an applicant has prepared an updated estimate of the cost for the water project, the applicant shall submit the updated estimate of the cost for the water project with the written request to be included on the next priority list.

2. If an applicant whose water project is currently on a priority list fails to submit a written request to be included on the next priority list pursuant to the provisions of subsection 1, the water project ~~will not be included on~~ *is subject to exclusion from* the next priority list.

3. After receiving proposals for water projects and written requests to remain on the priority list pursuant to subsection 1, the Division shall:

(a) Establish eligibility of each water project and applicant to receive financial assistance;

(b) Determine the rank of each water project and request to receive financial assistance on the priority list in accordance with the provisions of NAC 445A.67567 to 445A.67571, inclusive;
and

(c) Submit the priority list to the Board for Financing Water Projects.

4. If a proposed water project includes multiple phases, the applicant shall file a separate preapplication for each phase.

5. The preapplication must include, without limitation:

(a) The name, address and telephone number for the applicant or a representative of the applicant;

(b) A description of the proposed water project that indicates the project shall address specific public health concerns or problems;

(c) A map showing the location of the service area for the public water system and the water project;

(d) If an estimate has been prepared by a professional engineer of the total cost of the water project, a copy of the estimate of the total cost of the water project;

(e) The estimated schedule for completion of the water project;

(f) Evidence of readiness of the applicant to proceed;

(g) The number of service connections currently being served by the public water system of the applicant;

(h) An estimate of the size of the population that is currently being served by the public water system of the applicant;

(i) Any other anticipated sources of funding for the water project from a state or federal agency or other entity;

(j) The median household income for the community or area that will be served or for the county in which the water project is located, including, without limitation, the source of that information;

(k) The anticipated impact of the costs of the water project to the rates or user charges for existing customers;

(l) The anticipated source of revenue to pay the principal and interest on the loan, including, without limitation, a description of any authorization that may be required to use that revenue for such a purpose; and

(m) Any additional information necessary to establish the priority rank for the water project.

6. The owner or an authorized representative of the owner or governing or managing body of a public water system shall sign the preapplication.

7. The Division shall maintain all requests and proposals that an applicant submits pursuant to this section at the main office. The Division shall make the files available to the public.

Sec. 5. NAC 445A.67569 is hereby amended to read as follows:

445A.67569 1. The Division shall rank water projects using the following criteria:

(a) The Division shall determine whether each water system qualifies as a public water system pursuant to 42 U.S.C. § 300j-12 to satisfy the requirements set forth therein to receive loan assistance.

(b) The Division shall place each water project into one of the following four classes:

(1) A Class I water project is intended to address problems, including, without limitation, demonstrated illness attributable to the public water system, significant noncompliance, a court-ordered compliance or acute health concerns related to meeting the water quality requirements of NAC 445A.453. The Division shall prioritize Class I water projects, giving projects with a higher score priority over projects with a lower score, according to the total score each receives for:

(I) Demonstrated illness attributable to the public water system, significant noncompliance, a court-ordered compliance or acute health concerns related to meeting the water quality requirements of NAC 445A.453, 5 points;

(II) Demonstrated or documented noncompliance with the rules governing the maximum contaminant levels of microbiological contaminants found in 40 C.F.R. § 141.63, 4 points;

(III) Being subject to an order to boil water issued under the authority of the Chief Medical Officer, 4 points;

(IV) Demonstrated or documented noncompliance with the rules governing the filtration and disinfection of surface water found in 40 C.F.R. §§ 141.70 to 141.75, inclusive, 3 points;

(V) Demonstrated or documented noncompliance with the rule governing the maximum contaminant levels of nitrate found in 40 C.F.R. § 141.62(b)(7)-(b)(9), 2 points; and

(VI) Any other factor as provided in the intended use plan established for the year in which the priority list is developed.

(2) A Class II water project is intended to address chronic health concerns by satisfying the requirements for water quality set forth in NAC 445A.453 and 445A.455. The Division shall

prioritize Class II water projects, giving projects with a higher score priority over projects with a lower score, according to the total score each receives for:

(I) Demonstrated or documented noncompliance with any one of the requirements for water quality set forth in NAC 445A.453, 10 points each;

(II) Exceeding any one of the secondary drinking water standards found in NAC 445A.455, 1 point each; or

(III) Any other factor as provided in the intended use plan established for the year in which the priority list is developed.

(3) A Class III water project is intended to address deteriorated, substandard or inadequate conditions in the public water system. The Division shall prioritize Class III water projects, giving projects with a higher score priority over projects with a lower score, according to the total score each project receives for the following types of water projects:

(I) The consolidation of water supplies or facilities to eliminate water supplies that are contaminated, eliminate facilities that do not meet state regulations, or enable systems through a physical or management consolidation to comply with technical, managerial and financial capability requirements, 25 points;

(II) The rehabilitation or replacement of treatment facilities that would improve the quality of drinking water to avoid noncompliance with NAC 445A.453 and 445A.455, 20 points;

(III) The rehabilitation, replacement or development of production facilities to replace contaminated sources, 15 points;

(IV) The installation or upgrading of storage facilities associated with finished water reservoirs and reservoirs that are part of a water treatment facility and located on the property

where the treatment facility is located to prevent microbiological contaminants from entering the water system, 10 points;

(V) The installation or replacement of transmission pipes to prevent contamination caused by leaks or breaks in the pipes or to improve water pressure to satisfy the requirements of NAC 445A.6672, 8 points;

(VI) The installation or replacement of distribution pipes to prevent contamination caused by leaks or breaks in the pipes or to improve water pressure to satisfy the requirements of NAC 445A.6672, 6 points;

(VII) The installation of equipment, facilities or devices to prevent contamination by backflow or cross-connections and to satisfy the requirements of NAC 445A.67185 to 445A.67255, inclusive, 4 points;

(VIII) The installation of metering, if the metering is intended to satisfy the requirements of water conservation plans developed to comply with NRS 540.121 to 540.151, inclusive, 704.662, 704.6622 and 704.6624, 3 points; ~~and~~

(IX) *The installation or upgrading of security-related equipment, facilities or devices, 3 points;*

(X) The installation of computer control for the water system, 3 points;

(XI) Any work intended to correct any noncompliance by the water system with applicable state or federal statutes or regulations or facilitate the enforcement of such statutes or regulations, 3 points; and

(XII) Any other factor as provided in the intended use plan established for the year in which the priority list is developed.

(4) A Class IV project consists of refinancing any existing debt that was incurred after July 1, 1993, pursuant to 42 U.S.C. § 300j-12(f)(2).

(c) Regardless of the class in which a water project is placed and in addition to the criteria applicable to the project pursuant to paragraph (b), a project must be scored in accordance with the following criteria:

(1) For the water system having mapped its facilities and analyzed risks of failure in the system, the expected dates for renewing and replacing its facilities and equipment, and the sources and amounts of money needed to finance the operation, maintenance and capital expenditures of the system, 1 point.

(2) For the water system having developed a rate structure appropriate to build, operate and maintain the system, 1 point.

(3) For the water system having specifically allocated money for the rehabilitation and replacement of aging or deteriorating facilities and equipment, 1 point.

2. The Division shall rank water projects first according to which class the project is in, with Class I water projects having the highest priority and Class IV water projects having the lowest priority, and then within the class according to the point total each water project receives pursuant to the ranking system set forth in subsection 3.

3. Within each class, the water projects will be ranked according to the type of public water system the project will affect in the following order:

- (a) Community public water systems;
- (b) Nonprofit, nontransient water systems; and
- (c) Nonprofit, transient water systems.

4. The Division shall not move a water project from one class to another based on the ranking the water project receives from the total points within each class.

5. The product of the initial rank number of a water project within a class of water projects and the ratio of the state median household income to the median household income that is associated with the service area served by the public water system determines the final rank number associated with the water project within each class.

6. If two or more water projects within the same class have the same final rank number, the water project that is associated with the service area with the highest population shall be deemed to be ranked higher within the class.

7. The Division may also provide financial assistance pursuant to NAC 445A.67562 for planning and engineering to determine causes of problems in the public water system and to define and carry out solutions. The Division shall prioritize such a project in the order appropriate to the problem that the water project is intended to solve.

Sec. 6. NAC 445A.67571 is hereby amended to read as follows:

445A.67571 1. After the Division finalizes the priority list and at least ~~{15}~~ **5 working** days before the meeting of the Board for Financing Water Projects, the Division shall ~~{~~

~~{(a) Submit}~~ **submit** the priority list to the Board ~~{for Financing Water Projects}~~ for **review and possible** approval. ~~{ and~~

~~{(b) Provide a copy of the proposed final priority list to each person who submitted a preapplication to the Division.}~~

2. Any objection to the ~~{ranking of water projects on a proposed priority list must be filed with the Division in writing not later than 7 days before the meeting of the Board for Financing Water Projects.}~~

~~3. Objections to the~~ proposed priority list that ~~are~~ *is* not resolved by the Division before the meeting of the Board for Financing Water Projects may be made orally at the meeting of the Board. ~~{for Financing Water Projects.}~~

Sec. 7. NAC 445A.67573 is hereby amended to read as follows:

445A.67573 1. The Division may bypass a water project on the priority list if it determines that the water project is not ready to proceed or the applicant for the project:

(a) Withdraws the water project; *or*

(b) ~~{Requests action to be deferred as allowed pursuant to subsection 2 of NAC 445A.67577;~~

~~or~~

~~(c)}~~ Fails to file a letter of intent as required pursuant to NAC 445A.67577 and 445A.67578.

2. If the Division determines that the water project is not ready to proceed, the Division shall provide notice of its determination to the applicant. After receiving notice, the applicant must respond to the Division within 30 days.

3. If the applicant files an objection in the response provided for in subsection 2 that cannot be resolved by the Division, the Division shall request that the matter be heard at the next meeting of the Board for Financing Water Projects for hearing and resolution. The Division shall provide at least 15 days' notice of the meeting to the affected applicant.

Sec. 8. NAC 445A.67575 is hereby amended to read as follows:

445A.67575 ~~{H.}~~ An intended use plan must be prepared by the Division which describes how all money deposited into the Account for the Revolving Fund and the Account for Set-Aside Programs will be used. The intended use plan must include a description of:

~~(a)~~ 1. How all money that is made available to the Account for the Revolving Fund and the Account for Set-Aside Programs will be used, including, without limitation, money from the following sources:

~~(1)~~ (a) Capitalization grants; and

~~(2)~~ (b) State matching funds, including, without limitation, gifts, appropriations, contributions, grants and bequests of money from any public or private source;

~~(b)~~ 2. How loan repayments will be made;

~~(e)~~ 3. How interest earnings and bond proceeds will be handled;

~~(d)~~ 4. The criteria and method used for the distribution of funds;

~~(e)~~ 5. The financial status of the program;

~~(f)~~ 6. The short- and long-term goals of the program;

~~(g)~~ 7. The amounts of money transferred between the Account for the Revolving Fund and the Account to Finance the Construction of Treatment Works and the Implementation of Pollution Control Projects created pursuant to NRS 445A.120;

~~(h)~~ 8. Any program for a disadvantaged community and the funds utilized for this type of assistance;

~~(i)~~ 9. The method employed by the Division to rank water projects on the priority list;

~~(j)~~ 10. Priority lists for:

~~(1)~~ (a) If a water project is ready to proceed in the year in which the priority list is developed, water projects that will receive funding in the first year after the grant award; and

~~(2)~~ (b) Water projects that are eligible for funding in future years;

~~(k)~~ 11. Procedures for altering the status of water projects on the priority list, including, without limitation, the addition of water projects addressing emergency situations; and

~~(11)~~ **12.** The process used to obtain public review *of* and comment ~~to~~ *on* the intended use plan and a summary of responses to any substantial public comments received.

~~{2. As used in this section, “disadvantaged community” means an area served by a public water system in which the median household income is less than 80 percent of the state median household income.}~~

Sec. 9. NAC 445A.67576 is hereby amended to read as follows:

445A.67576 1. The Division shall conduct a public participation process to obtain public comment and review before finalizing its intended use plan.

2. Copies of the final intended use plan containing the information set forth in NAC 445A.67575 must be made available in the offices of the Division, or its successor, and ~~in the main public library of each county throughout this State.}~~ *posted on the Internet website of the Division.*

Sec. 10. NAC 445A.67577 is hereby amended to read as follows:

445A.67577 ~~{1. Not later than 15 days after}~~ *After* the priority list is approved by the Board for Financing Water Projects pursuant to NAC 445A.67571, ~~{the Division shall notify each applicant on the priority list of the ranking of water projects.}~~

~~—2. After receiving the notification letter pursuant to subsection 1,}~~ each applicant ~~{shall file with the Division a letter of intent, indicating its intentions to either:~~

~~—(a) Proceed}~~ *on the priority list that wishes to proceed* with an application for financial assistance for *a* proposed water ~~{projects; or~~

~~—(b) Defer action on an application until a later time.~~

~~—3. Failure to respond within 30 days after reviewing the notification letter may result in the bypass of the applicant’s water project for that year pursuant to the procedure set forth in NAC~~

~~445A.67573-1~~ *project must file with the Division a letter of intent meeting the requirements of NAC 445A.67578.*

Sec. 11. NAC 445A.67578 is hereby amended to read as follows:

445A.67578 1. The letter of intent must include:

- (a) The name, *postal* address , *electronic mail address* and telephone number of each applicant;
- (b) The title or name, the location and a brief description of the proposed water project, including, without limitation, maps or preliminary plans;
- (c) The number of residential service connections with population served and the number of nonresidential service connections with population served;
- (d) A preliminary estimate of the cost of the water project improvement and any additional costs necessary for financing the water project improvement;
- (e) Preliminary environmental information on a form provided by the Division;
- (f) A description of future improvements planned by the applicant, if any, that are not part of the capital improvement for which the application is made;
- (g) A brief description of how the water project improvement would make the system comply with the requirements for public water systems;
- (h) A statement that the plan of water conservation adopted pursuant to NRS 540.121 to 540.151, inclusive, or 704.662, 704.6622 and 704.6624 will be, or has been, filed with the appropriate regulatory body before receipt of the loan;
- (i) The anticipated schedule for filing an application;
- (j) A request to determine whether the water project is eligible for a categorical exclusion;
- (k) Whether the applicant requests a preapplication conference with the Division;

(l) Any additional information required by the Division; and

(m) A brief description of any material changes to the water project that were proposed in the preapplication.

2. The letter of intent must be mailed to the Division of Environmental Protection, Drinking Water State Revolving Fund.

3. The applicant's letter of intent to proceed with the proposed water project serves as a request to the Division to:

(a) If a preapplication conference is requested or determined to be required pursuant to the provisions of NAC 445A.67579, schedule the preapplication conference; and

(b) Initiate the process of environmental review pursuant to NAC 445A.6758 to 445A.67612, inclusive.

Sec. 12. NAC 445A.67584 is hereby amended to read as follows:

445A.67584 1. If the Division determines that a water project is eligible for a categorical exclusion pursuant to NAC 445A.67583, the Division shall provide notice of its intent to grant the categorical exclusion.

2. The notice that the Division provides pursuant to subsection 1 must be:

(a) Published at least once in a newspaper of general circulation throughout the area affected;

(b) Provided to persons potentially affected by the water project, including, without limitation, adjacent landowners;

(c) Mailed by the Division to each person included on a mailing list maintained by the Division;

(d) Provided to appropriate federal and state agencies; and

(e) Submitted to the state clearinghouse for review by other federal and state agencies.

3. The notice must include:

(a) A description and location of the proposed water project, or proposed action or determination of the Division;

(b) Reasons supporting the Division's preliminary determination of eligibility of a water project for categorical exclusion;

(c) *A statement that the Division may grant a categorical exclusion and the process of environmental review shall be deemed to be complete if no comments that the Division determines to be significant are received within the time allowed for public comment;*

(d) A statement of whether the water project is being funded in whole or in part by federal funds;

~~(d)~~ (e) The time that the Division will allow for public comment; and

~~(e)~~ (f) The address to which written comments may be sent.

4. The period for public comment concerning the determination that a water project is eligible for categorical exclusion is 30 days after the Division has provided the notice in the manner set forth in subsection 2.

Sec. 13. NAC 445A.67589 is hereby amended to read as follows:

445A.67589 1. If the Division determines that it intends to make a finding of no significant impact for a water project, the Division shall provide notice of its intention using the procedures for providing notice set forth in subsection 2. The Division shall list in its finding all mitigation measures the applicant must take.

2. The notice provided pursuant to subsection 1 must be:

(a) Published at least once in a newspaper of general circulation throughout the area affected;

(b) Provided to persons potentially affected by the water project, including, without limitation, adjacent landowners;

(c) Mailed by the Division to each person included on a mailing list maintained by the Division;

(d) Provided to appropriate federal and state agencies; and

(e) Submitted to the state clearinghouse for review by other federal and state agencies.

3. The notice must include:

(a) A description and location of the proposed water project, or proposed action or determination of the Division;

(b) Reasons supporting the Division's preliminary finding of no significant impact for the project;

(c) *A statement that the Division may make a finding of no significant impact and the process of environmental review shall be deemed to be complete if no comments that the Division determines to be significant are received within the time allowed for public comment;*

(d) The time that the Division will allow for public comment; and

~~(d)~~ (e) The address to which written comments may be sent.

4. The period for public comment concerning a finding of no significant impact is 30 days after the Division has provided notice in the manner set forth in subsection 2.

Sec. 14. NAC 445A.67597 is hereby amended to read as follows:

445A.67597 1. The applicant shall:

(a) Provide ~~five~~ *two paper* copies *and one electronic copy* of the draft environmental impact statement to the Division;

(b) Provide copies of the draft environmental impact statement to all local, state and federal agencies and public organizations that have an interest in the proposed water project; and

(c) Make copies of the draft environmental impact statement available for public review.

2. The Division shall provide notice of the availability of the draft environmental impact statement for review as soon as possible after the Division receives copies of the draft.

3. The notice provided pursuant to subsection 2 must be:

(a) Published at least once in a newspaper of general circulation throughout the area affected;

(b) Provided to persons who are potentially affected by the water project, including, without limitation, adjacent landowners;

(c) Mailed by the Division to each person included on a mailing list maintained by the Division for the water project;

(d) Provided to appropriate federal agencies; and

(e) Submitted to the state clearinghouse for review by other federal and state agencies.

4. The notice must include:

(a) A description and location of the proposed water project;

(b) The place at which the draft environmental impact statement may be reviewed;

(c) The time allowed for public comment concerning the draft environmental impact statement; and

(d) The address to which written comments may be sent.

5. The period for public comment concerning a draft environmental impact statement is 30 days after the Division has provided the notice in the manner set forth in subsection 3.

Sec. 15. NAC 445A.67613 is hereby amended to read as follows:

445A.67613 1. An applicant may make a formal request for financial assistance from the Account for the Revolving Fund by filing with the Division an application at any time after the applicant has filed the letter of intent pursuant to the provisions of NAC ~~445A.67578.~~ **445A.67577.**

2. An application for a short-term loan submitted pursuant to NAC 445A.67562 must include, without limitation:

(a) The name, *postal* address , *electronic mail address* and telephone number of the applicant or a legal representative of the applicant;

(b) A brief description of the proposed water project, including, without limitation, its effect on the public water system;

(c) A brief description of the need for water project planning, design and other related costs;

(d) The estimated costs for the request;

(e) Information necessary to understand the alternatives to be considered and their environmental impact;

(f) *Information about the financial history and financial projections of the applicant, as necessary for the Division to determine the creditworthiness of the applicant;*

(g) Information necessary for the Division to determine how the loan is to be repaid; and

~~(g)~~ (h) Any other information deemed necessary by the Division.

3. An application for a long-term loan submitted pursuant to NAC 445A.67561 must include, without limitation:

(a) The name, *postal* address , *electronic mail address* and telephone number of the applicant or the legal representative of the applicant.

- (b) A brief description of the proposed water project, including, without limitation, its anticipated effect on the public water system.
- (c) The number of service connections and estimated population currently served by the applicant.
- (d) An estimate of the number of service connections and future population to be served by the water project for the useful life of the water project.
- (e) Maps of appropriate scale to show clearly the location of the proposed water project with respect to other identifiable topographical or geographical features in the service area of the public water system.
- (f) A complete and legible legal description of the entire area of service for the water project improvement, including, without limitation, a map showing the layout of the water project with clear reference to aerial or other maps showing sections and townships.
- (g) Proof of ownership, rights-of-way, easements or agreements showing that the applicant holds or is able to acquire all land, other than public land, or acquire interests therein and any water rights necessary for the construction of the proposed water project. Copies of deeds to land to be occupied, records of surveys, easements, agreements or permits to appropriate water granted pursuant to chapters 533 and 534 of NRS may be used as evidence of ownership.
- (h) A description of how the water project complies with planning and zoning requirements.
- (i) A copy of the current plan of water conservation adopted by the applicant pursuant to NRS 540.121 to 540.151, inclusive, or 704.662, 704.6622 and 704.6624, as applicable, and an analysis of the effectiveness of the plan.
- (j) A description of the best available technology for the water project being proposed.

(k) An itemized estimate of the total cost of the water project that is prepared by a professional engineer.

(l) Information sufficient to demonstrate, through a systematic and cost-effective analysis of alternatives that are feasible, that the alternative selected is the most effective means of meeting the applicable water quality and public health requirements over the design life of the facility.

(m) A preliminary water project schedule that provides a timetable for:

(1) Advertising and opening bids;

(2) The start of the construction phase;

(3) *The drawdown of money in the Account for the Revolving Fund;*

(4) The estimated schedule of progress payments to the contractor and other costs related to the drawdown of ~~funds~~ money in the Account for the Revolving Fund;

~~(4)~~ (5) Completion of the construction phase; and

~~(5)~~ (6) Initiation of the operation of the water project.

(n) ~~A description of how the costs for capital construction, operation and maintenance and costs for debt service to support the loan will be recovered.~~ *Information necessary for the Division to determine how the loan is to be repaid,* including, without limitation:

(1) A proposed revenue program that demonstrates the cost effect on users of the public water system, including, without limitation, any connection fees or changes in user charges;

(2) Orders or resolutions specifying the method of loan repayment from the appropriate governing board, regulatory agency or local governing body having rate jurisdiction;

(3) Contractual loan agreements; or

(4) Any other information ~~necessary for the Division to understand how the applicant intends to repay the loan.~~ *requested by the Division.*

- (o) Estimated costs of future expansion and long-term needs for reconstruction of facilities following their design life.
- (p) A summary of public participation in the development of the proposed water project.
- (q) Institutional and management arrangements required for successful implementation of the water project.
- (r) A report on the status of the process of environmental review for the project.
- (s) A list of any required permits and a schedule of when those permits will be obtained.
- (t) ~~{The financial history of the applicant, including, without limitation, annual financial statements for the preceding 3 years.~~
- ~~—(u) Financial projections for a period of at least 5 years after the completion of the water project, including, without limitation, projected revenue and expenses.~~
- ~~—(v) A list of previously approved loans to the applicant within the past 10 years, including, without limitation, the terms and conditions of payment and a statement of the remaining balances of any outstanding loans.~~
- ~~—(w) If the water project is for a public water system that is privately owned, at least three credit references.~~
- ~~—(x) *Information about the financial history and financial projections of the applicant, as necessary for the Division to determine the creditworthiness of the applicant.*~~
- (u) Copies of current capital improvement plans and debt management policies as provided to the Department of Taxation pursuant to chapter 350 of NRS and any applicable regulation.
- ~~{(y)}~~ (v) Security for the loan, if applicable.
- ~~{(z)}~~ (w) Evidence that the public water system has the capability to comply with the Safe Drinking Water Act and NAC 445A.450 to 445A.6731, inclusive.

4. To ensure a complete application, the applicant shall submit any other information deemed necessary by the Division.

5. The information required pursuant to paragraph (l) of subsection 3 must include, without limitation:

(a) A description of how the alternatives listed will meet the water quality and public health needs, including, without limitation, an estimate of any future growth expected after the water project becomes operational;

(b) An estimate of how improving the operations, maintenance and efficiency of existing facilities will improve the performance of the public water system compared to how much the performance would be improved by constructing new facilities;

(c) A description of any opportunities the water project will provide to reduce the use of energy or to recover energy;

(d) An estimate of the total capital costs and the annual operation and maintenance costs; and

(e) An estimate of the annual or monthly costs to residential, commercial and industrial users during the 20 years after completion of the water project.

6. An applicant shall consider the present worth or equivalent annual value of all capital, operation and maintenance costs when satisfying the requirements of paragraph (l) of subsection 3.

7. The forecasts of population that an applicant provides pursuant to paragraph (l) of subsection 3 must be consistent with any forecasts of population that the state demographer has prepared.

8. As used in this section, “best available technology” means the technology, treatment technique or procedure that the EPA finds is the most appropriate and most cost-effective for

solving a particular problem after examining the efficacy of the technology, technique or procedure under laboratory and field conditions.

Sec. 16. NAC 445A.67619 is hereby amended to read as follows:

445A.67619 The Division shall:

1. Review the completed application and any records and other documents submitted by the applicant concerning the water project to evaluate whether:

(a) The proposed water project is feasible from an engineering and legal standpoint, is economically justified and is financially feasible;

(b) There is adequate assurance that the applicant can repay the loan;

(c) The applicant has taken sufficient and reasonable efforts to determine whether the proposed water project conflicts with any regional master plan of any local, state or federal governing authority, and those efforts have not revealed such a conflict; and

(d) If revenue bonds are to be issued, the applicant has executed a legally binding statement not to undertake to commit the State and any other political subdivision or municipality, other than the applicant, to incur any pecuniary liability in connection with the repayment of the bonds.

2. Submit the report required pursuant to NAC 445A.67618 to the Board for Financing Water Projects with a recommendation that the Board:

(a) Approve the commitment of funds requested by the applicant;

(b) Approve the commitment of funds requested by the applicant with conditions; or

(c) Deny the commitment of funds requested by the applicant.

3. Request the Chair of the Board for Financing Water Projects to convene a public hearing by the Board on the matter.

Sec. 17. NAC 445A.67621 is hereby amended to read as follows:

445A.67621 1. ~~After receiving the notification required pursuant to NAC 445A.6762 and before~~ *Before* advertising for bids, ~~an applicant~~ *a recipient* shall submit to the Division a final set of plans and specifications for the water project.

2. The Division shall examine the plans and specifications to determine whether:

(a) The water project will satisfy the requirements set forth in NAC 445A.453 and 445A.455;
and

(b) The water project will comply with all applicable federal and state requirements.

Sec. 18. NAC 445A.67623 is hereby amended to read as follows:

445A.67623 ~~H.~~ The applicant and the Administrator may execute a loan contract only after any conditions to the commitment of financial assistance have been met.

~~2.—The loan contract must be:~~

~~—(a) On a form provided by the Division; and~~

~~—(b) Executed by all parties before the commencement of construction of the water project.]~~

Sec. 19. NAC 445A.67626 is hereby amended to read as follows:

445A.67626 1. A recipient:

(a) May submit to the Division periodic requests for the disbursement of money pursuant to the loan. Each request must be on a form provided by the Division.

(b) Shall submit to the Division ~~proof~~ *documentation demonstrating* that any prior disbursements of money pursuant to the loan have been distributed by the recipient in an appropriate manner.

2. The ~~proof~~ *documentation submitted pursuant to paragraph (b) of subsection 1* must consist of ~~copies~~ :

(a) Written documentation from a financial institution of wire transfers or other electronic fund transfers initiated by the recipient; or

(b) Copies of the ~~front and back of~~ cancelled checks issued by the recipient ,

↳ for the payment of reimbursable costs.

~~2.~~ 3. The disbursement of any money to a recipient must comply with the loan contract.

~~3.~~ 4. The approval of each payment must be based on the actual reimbursable costs

incurred to date.

Sec. 20. NAC 445A.67628 is hereby amended to read as follows:

445A.67628 1. The Commission hereby adopts by reference the most current pronouncements issued by the Governmental Accounting Standards Board, unless a pronouncement is disapproved by the Commission within 60 days after the date the pronouncement is published. The Commission will review each pronouncement to ensure its suitability for this State. A copy of the pronouncements is available at a cost of ~~65~~ \$105 from the Governmental Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116 ~~or~~ or by telephone at (800) 748-0659 or *free of charge* at the Internet address ~~http://store.yahoo.com/gasbpubs/gop03.html~~ <https://www.gasb.org/store>.

2. The Commission hereby adopts by reference the pronouncements issued by the Financial Accounting Standards Board on or before November 30, 1989. If the pronouncements issued by the Financial Accounting Standards Board on or before November 30, 1989, conflict with the most current pronouncements issued by the Governmental Accounting Standards Board adopted by reference pursuant to subsection 1, the pronouncements issued by the Governmental Accounting Standards Board apply. ~~A copy of the pronouncements is available at a cost of \$109.95 from John Wiley and Sons, Inc., Customer Care Center—Consumer Accounts, 10475~~

Crosspoint Boulevard, Indianapolis, Indiana 46256, by telephone at (877) 762-2974 or at the Internet address <http://www.wiley.com/WileyCDA/WileyTitle/productCd-0471230138.html>.

The pronouncements are ~~also~~ available, free of charge, from the Financial Accounting Standards Board at the Internet address <http://www.fasb.org/st/index.shtml>.
<https://www.fasb.org/store>.

3. A recipient shall maintain separate accounts for water projects in accordance with generally accepted accounting principles, including, without limitation, those adopted by reference in subsections 1 and 2.

Sec. 21. NAC 445A.67631 is hereby amended to read as follows:

445A.67631 1. ~~The recipient~~ *An applicant* shall conduct value engineering if the total estimated cost of constructing the water project is more than \$10,000,000. Any recommendations derived from the value engineering must be carried out to the extent feasible.

2. If the Division determines that a water project is especially complex, the Division shall require the ~~recipient~~ *applicant* to submit the project for peer review.

3. As used in this section:

(a) “Peer review” means a cursory review of the work of the design engineer for a water project, conducted by a person with equal competence and expertise in that discipline who is retained by the ~~recipient~~ *applicant* specifically to provide suggestions or comments which may enhance the performance of the water project or aid in the operation and maintenance of the water project; and

(b) “Value engineering” means a specialized technique for controlling costs which uses a systematic and creative approach to identify and focus on any unnecessary cost to reduce the cost of a water project without affecting the reliability or efficiency of the water project.

Sec. 22. NAC 445A.67632 is hereby amended to read as follows:

445A.67632 Any system of user charges ~~imposed~~ *proposed* by ~~a recipient~~ *an applicant* must:

1. Be designed to produce the money required for the costs of operation, maintenance and replacement of the water project and public water system;
2. Provide that each user or class of users shall pay its proportionate share of the costs of operation, maintenance and replacement of the water project and public water system; and
3. Include an adequate system of financial management that will account accurately for revenues generated by the system and expenditures for operation, maintenance and replacement based on an adequate budget identifying the basis for determining the annual cost of operation and maintenance, including, without limitation, the cost of personnel, equipment, services, supplies, energy and administration, and replacement of facilities that have exceeded their useful life.

Sec. 23. NAC 445A.67633 is hereby amended to read as follows:

445A.67633 1. If ~~it becomes~~ *the Division determines that it is* necessary for ~~a recipient~~ *an applicant* to impose a separate rate structure to repay a loan for a water project, the ~~recipient may impose~~ *applicant shall*:

(a) Adopt a resolution or take such other action as is required to impose its system of user charges , *contingent upon the commitment of money requested by the applicant; and*

(b) Submit to the Division documentation of the adoption of the resolution or other action,
↪ before the Board for Financing Water Projects takes action on a water project for which the Division has submitted a recommendation pursuant to NAC 445A.67619.

2. If ~~{a recipient uses}~~ *an applicant intends to use* an existing rate structure for a public water system to repay a loan, the ~~{recipient}~~ *applicant* shall provide the appropriate documentation *to the Division* to verify that the use of the existing rate structure will generate enough income to enable the ~~{recipient}~~ *applicant* to repay the loan.

Sec. 24. NAC 445A.67637 is hereby amended to read as follows:

445A.67637 A recipient shall ensure that, if his or her contractor for a water project awards any subcontracts relating to the water project, the contractor takes affirmative steps to ensure that disadvantaged businesses are used to the extent possible as sources of supplies, equipment, construction and services. These affirmative steps must include:

1. Including such businesses on solicitation lists;
2. Ensuring that such businesses are solicited if they are potential sources;
3. Dividing total requirements, if economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged businesses;
4. Establishing a schedule for the delivery of a requirement, if the requirement permits, to allow maximum participation by disadvantaged businesses;
5. Using the ~~{services of the Nevada Commission on Economic Development and the business advocacy office to locate disadvantaged businesses capable of performing the work to be subcontracted;}~~ *list of vendors certified through the federal Disadvantaged Business Enterprise Program, as maintained by the Department of Transportation, or an equivalent list of such vendors;* and
6. Ensuring that all subcontractors for the water project comply with the provisions of subsections 1 to 5, inclusive.

Sec. 25. NAC 445A.67639 is hereby amended to read as follows:

445A.67639 The Division may conduct oversight inspections during the construction of a water project ~~{The primary purpose of any such inspection must be}~~ to ascertain that the recipient is constructing the ~~{water}~~ project according to the approved plans and specifications and applicable contract requirements. ~~{Inspections must be conducted as they are deemed necessary by the Division.}~~

Sec. 26. NAC 445A.6762 and 445A.67625 are hereby repealed.

TEXT OF REPEALED SECTIONS

445A.6762 Notification of action taken regarding recommendations. The Division shall notify the applicant in writing no later than 15 days after it receives notice of the action taken by the Board for Financing Water Projects regarding the recommendations submitted pursuant to subsection 2 of NAC 445A.67619. The notification must include a copy of the written order of the Board.

445A.67625 Provision of certain documentation and reports to Division during construction of water project. During the construction of a water project, a recipient shall provide to the Division:

1. Such documentation as the Division deems necessary to determine compliance with the loan contract; and
2. Monthly reports regarding the progress of the construction of the water project, each of which must:

- (a) Include a current budget for the completion of the water project which accurately reflects:
 - (1) Any costs incurred up to the date of the report;
 - (2) The anticipated costs to complete the water project; and
 - (3) The status of available funding;
- (b) Identify each major change to any schedule for the water project and describe each reason for that change; and
- (c) Be accompanied by copies of any change orders affecting the scope or cost of any components of the water project.

Permanent Regulation – Informational Statement

A Regulation Relating to NDEP Administrative Services

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

State Environmental Commission (SEC) LCB File No: R099-14

Regulation R099-14:

On October 8, 2014, the SEC adopted a regulation modification related to the NDEP Bureau of Administrative Services program. The proposed regulation provides for general updates, language clarification, streamlining, organization and cleanup.

1. Need for Regulation:

The requested changes are general language clarification and cleanup. The requested additions also encourage system sustainability already included in the annual Intended Use Plan.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

On September 24, 2014, NDEP conducted a public workshop on LCB's Proposed Draft Regulation R099-14. The workshop was held in Carson City. The meeting location was Carson City at the Bryan Building located at 901 S. Stewart Street (Great Basin Conference Room).

One (1) member of the public commented at the workshop. That person was:

Brien Walters, Consulting Engineer, Reno

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at:

http://sec.nv.gov/main/hearing_1014.htm .

Following the workshop, the SEC held a formal regulatory hearing on October 8, 2014 at the Nevada Department of Conservation and Natural Resources, 901 South Stewart Street, Carson City, Nevada. A public notice and agenda for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, at the Division of Wildlife, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R099-14 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_1014.htm .

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended October 8, 2014 hearing: 16 (approximately)
- (b) Testified on this Petition at the hearing: 0
- (c) Submitted to the agency written comments: 0

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected entities through broad e-mail notification and a public workshop and at the October 8, 2014 SEC hearing as noted in number 2 above.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The regulation was adopted with a change. LCB agreed that inserting the statement “of electronic bank posting of payment or” was a non-substantive change. The SEC agreed and adopted the regulation with the recommended change:

Section 19. NAC 445A.67626 is hereby amended to read as follows:

- 1. A recipient:
 - (a) May submit to the Division periodic requests for the disbursement of money pursuant to the loan. Each request must be on a form provided by the Division.
 - (b) Shall submit to the Division [~~proof~~] *documentation demonstrating* that any prior disbursements of money pursuant to the loan have been distributed by the recipient in an appropriate manner. The [~~proof~~] *documentation* must consist *of electronic bank posting of payment or* copies of [~~the front and back of~~] cancelled checks issued by the recipient for the payment of reimbursable costs.
- 2. The disbursement of any money to a recipient must comply with the loan contract.
- 3. The approval of each payment must be based on the actual reimbursable costs incurred to date.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

- (a) Regulated Business/Industry. As the changes are primarily cleanup, there is no immediate or long-term adverse or beneficial effect on business (water systems).

- (b) Public. As the changes are primarily cleanup, there would be no direct cost to the water system users. Under certain circumstances the proposed regulation may enhance sustainability and allow systems to place higher on the priority list.

7. The estimated cost to the agency for enforcement of the adopted regulation.

As the changes are primarily cleanup, there will be no additional cost to the Agency.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

This regulation does not duplicate any other federal, state or local regulation.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulation is not more stringent than any federal regulation or guidance.

10. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not address fees.