

## PUBLIC WORKSHOP MEETING NOTES

Carson City, Nevada	Las Vegas, Nevada	Elko, Nevada
<p><b>March 02, 2015</b>                      1:00 p.m. – 3:00 p.m.                      Dept. of Conservation &amp; Natural Resources                      Richard H. Bryan State Office Building                      Tahoe Hearing Room 2<sup>nd</sup> Floor                      901 South Stewart Street                      Carson City, Nevada 89701-5249</p>	<p><b>March 03, 2015</b>                      2:00 p.m. – 4:00 p.m.                      Clark County Wetlands Park Nature Center                      7050 E. Wetlands Park Lane,                      Las Vegas, NV 89122</p>	<p><b>March 05, 2015</b>                      9:30 a.m. – 11:30 a.m.                      Elko County Library Meeting Room                      720 Court Street                      Elko, Nevada 89801</p>

A summary of the main comments and questions from the attendees at the workshops with NDEP responses is provided below. (Note: some of the NDEP responses may contain additional details for clarification that may not have been provided during the workshops.)

### Attendees:

Nevada Division of Environmental Protection (NDEP) Staff:

John Heggeness, Supervisor, Standards, Monitoring and Assessment (SMA) Branch, BWQP  
 Randy Pahl, Staff Engineer, TMDL and Special Projects Coordinator, BWQP  
 Dave Simpson, Environmental Scientist, SMA Branch, BWQP  
 Zack Blumberg, Environmental Scientist, SMA Branch, BWQP  
 Kathy Sertic, Chief, BWQP

Public:

*Carson City:*

Agnes Vagushelyi, US H2O Fidelity Environmental Solutions  
 Michael K. Johnson, Churchill County Planning  
 Terry Svetich, Stantec  
 Allen Biaggi, Nevada Mining Association  
 Randal Gray, City of Carson  
 Chris Fritsen, Desert Research Institute  
 Stephanie Wilson, U.S. Environmental Protection Agency (EPA)  
 Holly Holwager, Nevada Division of State Lands  
 Kameron Morgan, Pyramid Lake Paiute Tribe  
 Lynell Garfield-Qualls, City of Reno  
 Mike Baughman, Humboldt River Basin Water Authority  
 Brian Wadsworth, Pyramid Lake Paiute Tribe

*Las Vegas:*

Warren Turkett, Colorado River Commission  
 Sonnia Lewandowski, Clark County Water Reclamation District (CCWRD)  
 Dana LaRance, City of Henderson (COH)  
 Peggy Roefer, Southern Nevada Water Authority  
 Brenda Pohlmann, COH  
 Doug Drury, CCWRD

Elko:

Tom Patten, IML (Inter Mountain Lab)  
Stephanie Hallinan, BGEI (Barrick)

Mr. Heggeness began the workshops with a power point presentation that provided background on NDEP's WQS program and information on specific water quality standards actions currently underway that NDEP intends to present to the SEC for formal adoption during the coming year. Such actions include: the Truckee River; Lahontan Reservoir; Lower Humboldt River Basin tributary streams; updating alkalinity, total suspended solids, turbidity, and color numeric criteria; reformatting how the nitrogen species are presented in the WQS tables; and removing reference to the 95<sup>th</sup> percentile for the total dissolved solids beneficial use standard. NDEP is also evaluating whether it is appropriate to adopt EPA's new recommended ammonia and bacteria numeric criteria. The meeting was then opened for discussion, questions, and comments.

### **Comments/questions received at the Carson City workshop:**

**Ms. Svetich and Ms. Garfield-Qualls:** Please clarify what is meant by the "nitrogen species clean up."

**NDEP response:** NDEP is not revising the nitrogen numeric criteria. We are only changing how the criteria are listed and presented in the NAC water quality standards tables.

**Mr. Biaggi:** What waterbodies will be affected by the ammonia and bacteria updates?

**NDEP response:** The ammonia water quality standards are contained in NAC 445A.118 and are applicable to most waterbodies. EPA issued new recommended criteria in 2013 which are based on the presence/absence of certain species of mussels. NDEP is still determining if the species are present in Nevada and if it would be appropriate to adopt the EPA criteria.

Currently, numeric criteria for *Escherichia coli* bacteria are specified in the NAC for most waterbodies and may vary according to the level of recreational use expected for each waterbody. EPA issued new recommended criteria for bacteria in 2012 which does not account for varying levels of use/exposure. Therefore, NDEP is evaluating if it would be appropriate to adopt the new criteria.

**Mr. Johnson:** Is NDEP planning to review the Walker River water quality standards?

**NDEP response:** NDEP is not planning to review or update the site specific standards for the Walker River Basin during the next few years. NDEP implements a rotating basin approach, and although the Walker River Basin standards have not been updated since 2001, many areas of the State have not been reviewed for even longer periods of time including the Colorado River Basin, Black Rock Desert, Central, and Northwest Regions. NDEP expects to work in these areas over the next few years.

**Mr. Fritsen:** How does NDEP decide what actions are to be taken next?

**NDEP response:** NDEP considers several factors including: (1) new EPA recommended water quality criteria; (2) the length of time since the water quality standards for a particular region or basin have been reviewed or updated; (3) critical water quality standards issues that need to be addressed; (4) input from the Triennial Review public process; and (5) staff resources. Additionally we consider all the steps involved in finalizing a water quality standard action to help determine what is achievable over the next several year period including: (1) gathering information and collecting data; (2) drafting a rationale document that explains and justifies the proposed WQS; (3) public notice and meeting

requirements; (4) public workshops and comment periods; (5) submittal to the Legislative Council Bureau; and (6) presentation to the SEC and Nevada Legislature.

**Mr. Baughman:** What is the process to change a beneficial use?

**NDEP response:** A use attainability analysis must be conducted according to Code of Federal Regulations (CFR) 40 Part 131.10 to change or remove a beneficial use. Existing uses which have been attained on or after November, 28, 1975 cannot be removed.

**Mr. Baughman:** Are there aesthetic uses on waters in the Humboldt River Basin?

**NDEP response:** The aesthetic beneficial use has only been established for Lake Tahoe.

**Mr. Biaggi** commented that cost may be a factor in treating waters in the Humboldt River Basin to meet the municipal and domestic beneficial use standards.

**Mr. Baughman:** Does NDEP have flexibility during drought conditions when determining compliance with the standards?

**NDEP response:** The standards don't apply during extreme high or low flow conditions [NAC 445A.121 (8)]. NDEP uses the USGS 7Q10 flow statistics as thresholds when evaluating water quality data for 303(d) listing purposes.

**Ms. Garfield-Qualls:** How are pH and temperature considered in the ammonia standards?

**NDEP response:** Tables are provided in the NAC that show the applicable ammonia concentration for a specific pH and temperature.

**Mr. Wadsworth:** Are Tribal waters part of NDEP's Triennial Review?

**NDEP response:** No, NDEP has no authority to regulate water quality on Tribal lands.

**Mr. Fritsen:** Is NDEP addressing algal toxins or chlorophyll-a in the standards?

**NDEP response:** NDEP is not addressing algal toxins at this time, but we have established a chlorophyll-a standard for South Fork Reservoir and intend to do so for other lakes and reservoirs.

**Mr. Biaggi:** Is NDEP contemplating Tahoe near shore standards?

**NDEP response:** Not at this time, although we are working with the Tahoe Regional Planning Agency, Lahontan Regional Water Quality Control Board, EPA, DRI, and UC Davis to implement a monitoring program to evaluate nearshore conditions. This work may lead to revised nearshore water quality standards in the future.

**Ms. Svetich:** What is the status of the Lahontan Reservoir water quality standards?

**NDEP response:** NDEP had conducted public workshops in spring 2014, and proposed a chlorophyll-a standard of 15 µg/l and a total phosphorus (TP) standard of 0.14 mg/l. EPA subsequently indicated to NDEP that those standards were not approvable and instead indicated that NDEP use a chlorophyll-a value of 10 µg/l and a TP standard of 0.09 mg/l. This issue has not yet been resolved and NDEP is still in discussion with EPA. If different standards from those presented in 2014 are proposed in the future, NDEP will hold additional public workshops.

**Mr. Johnson:** What standards have been changed since that last Triennial Review?

**NDEP response:** NDEP is continually evaluating Nevada's water quality standards. Recent updates include removing waters located on Tribal lands from the NAC, and revising standards for waters in

the Upper Humboldt River Basin including establishing standards for South Fork Reservoir. The Triennial Review process is conducted to get input from other agencies and the public on standards that BWQP should consider for review, revision and/or development during the next several years.

**Mr. Biaggi** commented that NDEP should evaluate whether a waterbody is a water of the U.S. when setting standards.

**NDEP response:** NDEP has authority to establish water quality standards for all waters of the state (NRS 445A.520) regardless if the waters are considered to be waters of the U.S. The U.S. Army Corps of Engineers (Corps) determines if a waterbody is a water of the U.S. NDEP has relied on jurisdictional determinations issued by the Corps in evaluating compliance for 303(d) impaired waters listing purposes.

**Mr. Baughman:** Can or has the State set more stringent standards than federal criteria?

**NDEP response:** The State has the authority to set more stringent standards than recommended federal criteria, but we are not aware of any instances that NDEP has done so.

**Ms. Svetich:** Are 7Q10 low flow conditions being met during the current drought and are these low flow conditions affecting discharge permits?

**NDEP response:** Current flow conditions on the Truckee River are above the 7Q10 threshold for low flow. NDEP does expect that at times, during periods of drought, the 7Q10 low flow exemption will apply for assessment purposes.

**Ms. Garfield-Qualls and Mr. Baughman:** When does NDEP expect to notify the public about future actions?

**NDEP response:** NDEP expects to provide a summary of public comments, NDEP responses, and a refined list of future water quality standards actions in the May-June timeframe.

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### **Comments/questions received at the Las Vegas workshop:**

**Ms. LaRance:** Why is there a beneficial use of watering of livestock for the Las Vegas Wash?

**NDEP response:** Since the 1970s it has been State policy to protect the State's surface waters for existing or potential uses.

**Mr. Drury:** Does NDEP plan to remove any uses on the Las Vegas Bay or Lake Mead? Considering that Lake Mead levels have dropped significantly, can uses be removed? How are beneficial uses classified when the lake level drops and there is dry land?

**NDEP response:** NDEP has not evaluated the possibility of removing any uses at this time. A use attainability analysis would need to be conducted according to 40 CFR Part 131.10 to change or remove a beneficial use. Existing uses which have been attained on or after November, 28, 1975 cannot be removed.

**Mr. Drury:** Does Nevada coordinate with other states for interstate waters?

**NDEP response:** NDEP does coordinate with other states and would need to work with both Arizona and California for any standards affecting interstate waters in southern Nevada.

**Mr. Drury:** Has NDEP recently revised any standards for waters in southern Nevada?

**NDEP response:** Although recent site specific actions were focused on waters in northern Nevada, the dismantling of the Class Waters system in 2010 and the revised aquatic life toxics standards adopted in 2012 affected waters statewide. Also the Muddy River water quality standards were revised in 2008.

**Ms. LaRance:** Do all waters have standard tables?

**NDEP response:** Many but not all waters of the state have site specific water quality standards tables in the NAC. These are referred to as “Designated Waters”. The narrative standards (NAC 445A.121) apply to all waters of the state. Waters not specifically designated may be covered via the Tributary Rule (NAC 445A.1239).

**Ms. LaRance:** Can NDEP implement a new standard without EPA approval and what is meant by EPA “taking no action”?

**NDEP response:** Standards are not in effect under the Clean Water Act until EPA has given final approval. EPA can take one of three actions on water quality standards submitted by NDEP: (1) approve; (2) deny; or (3) take no action. Actions 2 and 3 mean that the existing NAC standard remains in place.

**Mr. Drury:** EPA may be proposing a new standard for viruses within a year. Is NDEP planning to adopt such a standard during this Triennial Review period?

**NDEP response:** NDEP is not aware of a proposed standard for viruses, but we will check with EPA.

**Ms. Roefler:** Is NDEP planning to remove the Delta T=0 standard?

**NDEP response:** EPA has repeatedly indicated that removal of the Delta T would not be approved.

**Mr. Drury:** Is NDEP planning to review the turbidity standard for the inner Las Vegas Bay?

**NDEP response:** Changes to the turbidity standard discussed during the presentation relate to removing the reference to natural conditions and providing consistency for most waters throughout the state with the exception of the Las Vegas Wash, Bay, Lake Mead and the Colorado River. The standards for these waterbodies will be evaluated as part of a focused review that we anticipate will start later this year.

**Mr. Drury:** How many of NDEP’s current actions are driven by EPA?

**NDEP response:** EPA has recently published updated recommended criteria for ammonia and bacteria and has urged that states adopt the new criteria as soon as possible.

**Mr. Turkett:** Will the temperature criteria workgroup be looking at site specific or statewide standards?

**NDEP response:** The workgroup will lay out the scientific foundation for developing revised criteria, but not necessarily recommend specific standards.

**Mr. Drury:** How does NDEP consider groundwater quality when setting standards?

**NDEP response:** We recognize there may be a connection between surface and groundwater; however we only establish standards for surface water. The numeric criteria are set to protect beneficial uses of surface water.

**Ms. Lewandowski:** How will the Profile I constituents be affected by BWQP’s proposed actions?

**NDEP response:** Profile I is used by the permitting bureaus to monitor for select parameters. It is not known at this time if the Profile I constituents will change.

**Mr. Drury:** How does NDEP consider drought when reviewing the standards?

**NDEP response:** The water quality standards are set to protect the beneficial uses of a waterbody. NDEP considers flow when determining compliance and uses the USGS 7Q10 flow statistics as thresholds when evaluating water quality data for 303(d) listing purposes.

**Mr. Turkett:** What is the process for changing existing water quality standards and how is EPA involved?

**NDEP response:** NDEP first engages affected stakeholders and EPA; then if determined to be appropriate, we develop a draft rationale document that explains and justifies the proposed changes; hold public workshops to get feedback; submit the petition to the Legislative Council Bureau; present the petition to the SEC and Nevada Legislature for adoption; then submit to EPA for final approval. The process is time and staff intensive and can take varying amounts of time depending on the complexity of the proposed changes. We work with EPA through the entire process as it is important to know that EPA is on board with what we are proposing. Otherwise, as previously discussed, if EPA doesn't approve the action, we are left with the existing standard.

**Ms. Pohlmann:** What is the timeframe for the proposed actions?

**NDEP response:** Our goal is to present petitions to the State Environmental Commission for the Lower Humboldt River Basin, Truckee River, Lahontan Reservoir, and clean-up actions for alkalinity, TSS/turbidity, TDS, and nitrogen species during the next 12 months. We are still reviewing the new EPA recommended criteria for ammonia and bacteria. If we determine it is appropriate to adopt those criteria, we would like to do so within that same timeframe. Revising the temperature and dissolved oxygen criteria is a more complex process that we expect to take longer to resolve.

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### **Comments/questions received at the Elko workshop:**

**Mr. Patten:** Is NDEP planning to add total nitrogen criteria to the water quality standards?

**NDEP response:** EPA is encouraging states to adopt nitrogen criteria, but we do not intend to do so in the near future. Nutrient concentrations alone are poor predictors of waterbody health. It is important to consider other factors such as dissolved oxygen and algae levels when assessing impairment. We have been conducting Phase I assessments on streams to qualitatively evaluate algae problems in order to better understand these complex relationships. More data is needed before we can propose total nitrogen numeric criteria.

**Mr. Patten:** Are there other parameters that NDEP is considering adding to the standards?

**NDEP response:** We are not adding any new parameters beyond those currently contained in the NAC for most waterbodies. We are striving for consistency for all waters and will be adding routine parameters including nitrate, nitrite, chloride, sulfate, alkalinity, total suspended solids, turbidity and color to waters in the Lower Humboldt River Basin.

**Ms. Hallinan:** Is NDEP required to review a certain number of waters every year?

**NDEP response:** No. The CWA requires that states review existing water quality standards at least once every three years. NDEP continually revises and updates Nevada's WQS and routinely presents petitions to the State Environmental Commission (SEC) for approval.

**Mr. Patten:** Are waters still classified by the Class system?

**NDEP response:** No, the Class Waters system was dismantled in 2008. A separate table with specific standards was created for each Class Water.

**Mr. Patten:** Does NDEP plan on adding parameters to the toxics table (NAC 445A.1236)?

**NDEP response:** No, not at this time.

**Mr. Patten:** Does EPA have a sulfate standard?

**NDEP response:** EPA has recommended secondary drinking water criteria of 250 mg/l.

**Mr. Patten:** Where does NDEP get biological monitoring data?

**NDEP response:** BWQP has collected biological and physical habitat data on streams throughout the State since 2000.

**Mr. Patten:** Is BWQP involved in approving laboratory analytical methods?

**NDEP response:** The NDEP Laboratory Certification Program within the Bureau of Safe Drinking Water certifies laboratories for the analyses of samples to meet requirements of the Clean Water Act, Safe Drinking Water Act and the Resource Conservation and Recovery Act according to NAC 445A.0552 – 445A.067.