



Drinking Water State Revolving Fund

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Office of Financial Assistance
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Proposed Regulation Changes

NAC 445A.6751 to NAC 445A.67644



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**CONSERVATION &
NATURAL RESOURCES**

Public Comment?

Comments can be limited to 3 minutes.

Proposed Changes

- A. Defining disadvantaged community
- B. Emergency situations for drinking water systems
- C. Environmental Review procedure changes
- D. Administrative fee for loans.
- E. Other federal statutory and regulatory changes
- F. Housekeeping

A. Defining disadvantaged community

Need for change

- Current approach is not broad enough to cover underserved communities
- Median Household Income date is not always accurate or available
- Income surveys are time consuming and may not yield good results
- Is not adaptable to federal changes or community changes
- Public engagement as part of a timely development process

Current approach

“Disadvantaged community” defined. (NAC 445A.675245)

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.

(Added to NAC by Environmental Comm’n by R099-14, eff. 10-24-2014)

Defining disadvantaged community

Proposed approach (NAC 445A.67565)

1. NDEP shall develop the definition of disadvantaged community.
2. Prior to finalizing any definition of a disadvantaged community, NDEP must conduct a public workshop and obtain approval from the Board for Financing Water Projects.
3. NDEP must also determine any program to fund projects for a disadvantaged community. The program must be outlined in the Intended Use Plan.
4. Prior to finalizing any program to fund projects for a disadvantaged community, NDEP must conduct a public workshop and obtain approval from the Board for Financing Water Projects.

Defining disadvantaged community

Proposed approach

1. The division may consider the following metrics and data:
 - (a) the income data of the project service area,
 - (c) the workforce indicators of the project service area
 - (d) the population served by the water system,
 - (e) the affordability of water rates for users of the system,
 - (f) the percentage of the project service area not proficient in the English language,
 - (g) the percentage of project service area receiving subsidies or financial assistance from governmental entities or political subdivisions of the state.
 - (h) a community experiencing an “emergency situation,” as defined by NAC 445A.67527.
 - (i) disproportionate impacts from climate change to the service area
 - (j) the percentage of the project service area without broadband internet access
 - (k) the percentage of the population in the service area without adequate transportation

Defining disadvantaged community

The income data of the project service area

• Poverty rates	% of state poverty rate
• Median Household Income	% of state MHI
• Per capita Income	% of state per capita income

Workforce indicators

• Unemployment Rate	% of state unemployment rate
• Percent not in the workforce	% of state not in the workforce

Percentage of the project service area receiving subsidies or financial assistance

• Supplemental Nutrition benefits	% of state SNAP recipients
• Welfare benefits	% of state recipients
• Water system rate subsidy	% of the water system

Defining disadvantaged community

Population served by the water system

- | | |
|----------------------------|-----------------------------------|
| • 5 or 6 population blocks | Points based on population blocks |
|----------------------------|-----------------------------------|

Affordability of water rates for users of the system

- Rates must have been reviewed by governing board within 5 years
- Current rates must be sufficient to cover operations, maintenance, debt service and required reserves of the current system.
 - Would a new loan for the project raise reasonable rates by more than 10%, 20%, or 30%?
 - Has the system voluntarily raised rates in the last 5 years by more than 10%, 20%, or 30%?



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B. Emergency situations for drinking water systems

Need for change

- Process is too slow to be effective in addressing emergencies
- EPA guidelines have reduced burden for emergencies
- Climate change requires a more proactive approach to addressing emergencies

EPA Guidance on the use of DWSRF funds for emergency situations

- Each state may define the conditions that constitute an emergency in its IUP.
- The state must report to the EPA the projects that it funded on an emergency basis in the state's biennial report and during the EPA's annual review.
- Projects funded on an emergency basis do not have to be on the state's Intended Use Plan nor do they require ranking using a state's priority system or have to go through a public review process prior to receiving assistance.

Emergency situations for drinking water systems

Definition

NAC 445A.67527 “Emergency situation” defined. “Emergency situation” occurs when:

1. Water at a public water system is contaminated or is likely to be contaminated to such an extent that it causes an imminent danger to public health and the contamination could not have been prevented by the operator of the system; or
2. There is a reduction of a source of potable drinking water for an extended period, or
3. **An emergency declaration by the governor for an area that may impact the delivery of safe drinking water.**

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98)

Inclusion in the definition of a disadvantaged system

- Currently experiencing an emergency situation

Emergency situations for drinking water systems

Priority List and public participation

- NDEP receives a pre-application to be added to the priority list for an emergency situation.
- Public notice is provided about the emergency situation and NDEP's intent to revise the priority list to assist the emergency.
- The Board for Financing Water Projects approves the project to be added to the Priority list without holding a public participation workshop. The resolution would contain the acknowledgement of the emergency situation.
- NDEP may bypass a water project on the priority list for an emergency situation after providing notice to all applicants on the priority list that are being bypassed, but would not be required to wait 30 days before proceeding.



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C. Environmental Review process changes

Need for change

- National Environmental Policy Act was amended September 2020.
- EPA is requesting Nevada develop a State Environmental Review Process (SERP) to comply with grant requirements.
- Reduce burden and add flexibility to this process.

C. Environmental Review process changes

Overall changes

- Adding the definition of the SERP
- Requiring EPA to review and approve the SERP
- Timeline for public notices
- The SERP would contain processes and project eligibility for:
 - Categorical Exclusion
 - Finding of no significant impact
 - Environmental Impact Statements
 - Public involvement

What is not changing

- The requirement for an Environmental Review and how long its effective
- Public notice process, including comment periods and NDEP required response



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D. Administrative fee for loans

Need for change

- The DWSRF program must be sustained in perpetuity.
- Only current source of funding for administration is federal grants.
- Federal funds are subject to re-allocation by EPA if Nevada cannot demonstrate need.
- Time is needed to build up funds for administration.

Financial Impact of change to borrowers

- NDEP is proposing changes to the Debt Management Policy that will minimize the financial impact of this change on borrowers.
 - Discount market rate proposed to change from 62.5% to 59%*
 - Change in discount will not harm the DWSRF program
 - Percent was determined to calculate a net neutral true interest cost when the market rate is 2.56%.

*Pending Board of Finance approval

Administrative fee for loans

Proposed service fee (NAC 445A.67624)

• Disadvantaged systems	No fees
• Principal Forgiveness or short-term loans	\$1,000 loan origination fee
• Long-term loans (borrower issuing a bond)	0.50% loan origination fee Annual fee: 0.50% of original loan amount, divided equally each year over the life of the loan.
• Long-term loans (borrower not issuing a bond)	0.50% loan origination fee Annual fee: 0.75% of the original loan amount, divided equally each year over the life of the loan.

Administrative fee for loans

	Proposed	Current
Base Interest (Market)	2.56%	2.56%
Market Discount	59.0%*	62.5%
Loan Interest	1.51%	1.60%

	Proposed	Current
Loan Amount	\$20,000,000	\$20,000,000
Loan Origination Fee	\$100,000	\$0
Annual Service Fee	\$100,000	\$0
Total Loan Interest	\$3,247,512.89	\$3,449,594.26
Total Loan Costs	\$3,447,512.89	\$3,449,594.26
True Interest Cost (T.I.C.)	1.565%	1.566%
Savings / (Cost) to Borrower	0.001%	

*Pending Board of Finance approval

Data subject to change with market conditions

Administrative fee for loans

	Loans Awarded	Origination Fee (estimate)	Service Fee (estimate)	Administration Expenses
FY 2017	\$37,126,138	\$185,630	\$9,282	\$340,688
FY 2018	\$14,260,000	\$71,300	\$12,547	\$355,237
FY 2019	\$34,336,483	\$171,682	\$21,131	\$355,504
FY 2020	\$2,200,000	\$11,000	\$21,682	\$349,568
FY 2021	\$16,250,000	\$81,250	\$25,743	\$398,302
FY 2022 (estimate)	\$3,378,635	\$6,000	\$25,743	\$440,941
Totals		\$526,862	\$116,128	\$2,240,240

Average Annual Fees	\$107,165
Average Annual Expenses	\$373,374
Time to cover annual expense	3.5 years



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E. Federal statutory and regulatory changes

Need for change

- Congressional changes to the Safe Drinking Water Act
 - Water Infrastructure Improvements for the Nation (WIIN) Act of 2017.
 - America's Water Infrastructure Act (AWIA) of 2018.

Changes

- Allows NDEP to issue long-term loans up to 30 years for project loans.
- Allows NDEP to issue long-term loans up to 40 years for disadvantaged systems.
- Adds flexibility for previously ineligible projects as federal changes occur.
- Changes in points on priority list and reserve fund requirements to encourage asset management plans and reserve accounts for sustainability.
- Other changes incorporated in emergency use of funds and NEPA process.



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G. Housekeeping

Need for change

- Definition changes.
- Remove duplication in language pertaining to the intended use plan and grant application process.
- Public notice process consistent with rest of NDEP.

Changes

- Updating definitions to be consistent with other sections of NAC.
- Updating public process to conform with other programs of NDEP.
- Removing duplication of language for intended use plan and grant application process.



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Timeline for implementation

Action	Estimated Date
Initial listening session	February 23, 2022
Submission to the Legislative Counsel Bureau	April 2022
Receive record from the Legislative Counsel Bureau	Mid June 2022
Regulation change public workshop	July 2022
State Environmental Commission meeting	September 2022
Legislative Commission	December 2022



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<https://ndep.nv.gov/water/financing-infrastructure/state-revolving-fund-loans>

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