

# PROPOSED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION

P \_\_\_\_\_

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

## ACCOUNT FOR THE REVOLVING FUND AND ACCOUNT FOR SET-ASIDE PROGRAMS

### General Provisions

**NAC 445A.6751 Definitions.** (NRS 445A.270) 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, have the meanings ascribed to them in those sections.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67511 “Account for the Revolving Fund” defined.** (NRS 445A.270) “Account for the Revolving Fund” has the meaning ascribed to it in NRS 445A.203.

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

**NAC 445A.67512 “Account for Set-Aside Programs” defined.** (NRS 445A.270) “Account for Set-Aside Programs” has the meaning ascribed to it in NRS 445A.205.

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

**NAC 445A.67513 “Acute health concern” defined.** (NRS 445A.270) “Acute health concern” means a concern regarding human health that occurs when exposure to a contaminant causes an immediate risk to human health and causes symptoms to occur quickly.

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

**NAC 445A.67514 “Administrator” defined.** (NRS 445A.270) “Administrator” has the meaning ascribed to it in NRS 445A.207.

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

**NAC 445A.67515 “Applicant” defined.** (NRS 445A.270) “Applicant” means a public water system that is seeking to obtain a loan from the Account for the Revolving Fund.

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

**NAC 445A.67517 “Board for Financing Water Projects” defined.** (NRS 445A.270) “Board for Financing Water Projects” means the Board created pursuant to NRS 349.957.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67518 “Capability” defined.** (NRS 445A.270) “Capability” means:

1. *The technical capability as defined by NRS 445A.847, and*
2. *The managerial capability as defined by NRS 445A.827, and*
3. *The financial capability as defined by NRS 445A.817, and*

[ 4. The ability to satisfy the requirements of chapter 445A of NRS and this chapter.

5. Capacity shall be taken to mean capability for this definition.

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

**NAC 445A.67519 “Capitalization grant” defined.** (NRS 445A.270) “Capitalization grant” has the same meaning as a federal grant as defined in NRS 445A.225.

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

**NAC 445A.6752 “Categorical exclusion” defined. (NRS 445A.270)** “Categorical exclusion” means an exemption from being required to comply with the provisions of NAC 445A.67587 to 445A.67612, inclusive, that is granted to an applicant for a proposed water project:

1. Which will not individually or cumulatively have a significant effect on the human environment; and
2. For which no environmental assessment or environmental impact statement is required pursuant to NAC 445A.67587 and 445A.67594 to 445A.67612, inclusive.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm’n by R128-04, 2-14-2005)

**NAC 445A.67521 “Chronic health concern” defined. (NRS 445A.270)** “Chronic health concern” means a concern regarding human health that occurs when:

1. Short-term exposure to a contaminant does not cause an immediate risk to human health but may result in adverse, long-term health symptoms; or
2. Long-term exposure may cause adverse health symptoms to develop over a long period.

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

**NAC 445A.675215 “Commission” defined. (NRS 445A.270)** “Commission” has the meaning ascribed to it in NRS 445A.210.

(Added to NAC by Environmental Comm’n by R128-04, eff. 2-14-2005)

**NAC 445A.67522 “Community water system” defined. (NRS 445A.270)** “Community water system” has the meaning ascribed to it in NRS 445A.808.

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

**NAC 445A.67523 “Completion of the water project” defined. (NRS 445A.270)** “Completion of the water project” means the time at which:

1. A recipient has satisfied all requirements of a construction contract for a water project;
2. The recipient has placed the water project in service; and
3. The final disbursement of loan funds, including, without limitation, the release of retention funds, has been made to the recipient.

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

**NAC 445A.67524 “Construction” defined. (NRS 445A.270)** “Construction” has the meaning ascribed to it in NRS 445A.215.

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

**NAC 445A.675245 “Disadvantaged community” defined. (NRS 445A.270, 445A.860)**

“Disadvantaged community” means an area served by a public water system that meets the definition developed pursuant to NAC 445A.67565, and published in the most current version of the DWSRF Intended Use Plan as required by NAC 445A.xxx.

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

**NAC 445A.67525 “Distribution system” defined. (NRS 445A.270)** “Distribution system” has the meaning ascribed to it in NAC 445A.65845.

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

**NAC 445A.67526 “Division” defined. (NRS 445A.270)** “Division” has the meaning ascribed to it in NRS 445A.220.

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

**NAC 445A.67527 “Emergency situation” defined. (NRS 445A.270)** “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)

**NAC 445A.67528 “Environmental assessment” defined. (NRS 445A.270)** “Environmental assessment” means a document prepared by an applicant that:

1. Provides the basis for the Division to:
  - (a) Issue a finding of no significant impact; or
  - (b) Require the applicant to prepare and submit an environmental impact statement;
2. Provides sufficient evidence and analysis to justify the action the Division takes pursuant to subsection 1; and
3. If the Division requires the applicant to prepare and submit an environmental impact statement, facilitates the preparation of the environmental impact statement by the applicant.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm’n by R128-04, 2-14-2005)

**NAC 445A.67529 “Environmental impact statement” defined. (NRS 445A.270)** “Environmental impact statement” means a report that the Division requires an applicant to prepare for a proposed water project if the Division determines that the project will have a significant impact on the quality of the human environment or will generate controversy concerning the natural environment. The statement must include a detailed and formal evaluation of the favorable and adverse environmental and social impacts of the proposed water project and describe any alternative action that may be less environmentally disruptive.

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

**NAC 445A.67531 “EPA” defined. (NRS 445A.270)** “EPA” means the United States Environmental Protection Agency.

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

**NAC 445A.67532 “Finding of no significant impact” defined. (NRS 445A.270)** “Finding of no significant impact” means a determination by the Division, after the review of an environmental assessment, that:

1. A water project will not have a significant effect on the human environment; and
2. The Division will not require the applicant to submit an environmental impact statement.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm’n by R128-04, 2-14-2005)

**NAC 445A.67533 “Intended use plan” defined. (NRS 445A.270)** “Intended use plan” means a report that the Division prepares which describes how this State will use the money it receives from the federal capitalization grant and the money it uses to provide the required matching funds to achieve the objectives of the Safe Drinking Water Act and further the goal of protecting public health.

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

**NAC 445A.67534 “Long-term loan” defined. (NRS 445A.270)** “Long-term loan” is a loan for which the term for repayment exceeds 5 years, but does not exceed 30 years or the life of the water project, whichever is shorter, unless the term is extended by the Division pursuant to NAC 445A.67561.

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

**NAC 445A.67535 “Maintenance” defined. (NRS 445A.270)** “Maintenance” means the preservation of the functional integrity and efficiency of the equipment and structures of a water project and includes, without limitation, any necessary preventive maintenance, corrective maintenance and replacement of equipment or structures.

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

**NAC 445A.67536 “Median household income” defined. (NRS 445A.270)** “Median household income” means the most recent median household income:

1. As determined from data from the United States Census Bureau;
2. As documented by an applicant for the service area of the public water system through an income survey; or

3. As determined by a method set forth in the intended use plan developed pursuant to NAC 445A.67574, 445A.67575 and 445A.67576.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67537 “Mitigation” defined. (NRS 445A.270)** “Mitigation” includes, without limitation:

1. Avoiding an environmental impact by not taking certain action;
2. Minimizing an environmental impact by limiting the degree or magnitude of an action and its implementation;
3. Rectifying an environmental impact by repairing, rehabilitating or restoring the part of the environment affected;
4. Reducing or eliminating an environmental impact over time by preservation and maintenance during the life of the water project; or
5. Compensating for an environmental impact by replacing or providing substitute resources or environments.

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

**NAC 445A.67538 “Noncommunity water system” defined. (NRS 445A.270)** “Noncommunity water system” has the meaning ascribed to it in NRS 445A.828.

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

**NAC 445A.67539 “Nonprofit” defined. (NRS 445A.270)** “Nonprofit” means that a public water system is legally organized to return no profit to its owners or members and has a federal identification number for tax-exempt status.

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

**NAC 445A.6754 “Nontransient, noncommunity water system” defined. (NRS 445A.270)** “Nontransient, has the meaning ascribed to it in NRS 445A.829.

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

**NAC 445A.67541 “Operation” defined. (NRS 445A.270)** “Operation” means the management and control of the individual processes and equipment that comprise a public water system. The term includes, without limitation, financial management, the management of personnel and records, laboratory control, process control, safety and planning for emergency operations and efforts to comply with any relevant regulations.

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

**NAC 445A.67542 “Operation and maintenance” defined. (NRS 445A.270)** “Operation and maintenance” means activities that are required to ensure the dependable and economical functioning of a water system.

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

**NAC 445A.67543 “Operator” defined. (NRS 445A.270)** “Operator” has the meaning ascribed to it in NRS 445A.830.

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

**NAC 445A.67544 “Priority list” defined. (NRS 445A.270)** “Priority list” means a list that the Division prepares annually which sets forth the order in which the Division will make financial assistance from the Account for the Revolving Fund available to potential water projects.

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

**NAC 445A.67545 “Process of environmental review” defined. (NRS 445A.270)** “Process of environmental review” means the development and evaluation of environmental information concerning a water project that enables the Division, pursuant to NAC 445A.6758 to 445A.67612, inclusive, to make a determination whether to:

1. Grant a categorical exclusion;
2. Make a finding of no significant impact; or
3. Require the applicant to submit an environmental impact statement.

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

**NAC 445A.67546 “Professional engineer” defined. (NRS 445A.270)** “Professional engineer” has the meaning ascribed to it in NRS 625.060.

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

**NAC 445A.67547 “Public water system” defined. (NRS 445A.270)** “Public water system” has the meaning ascribed to it in NRS 445A.235.

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

**NAC 445A.67548 “Recipient” defined. (NRS 445A.270)** “Recipient” means an applicant who has executed a contract for a loan with the Division to receive financial assistance in the form of a loan from the Account for the Revolving Fund.

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

**NAC 445A.67549 “Replacement” defined. (NRS 445A.270)** “Replacement” means the obtaining and installation of any equipment, accessories or appurtenances during the life of a water project that are necessary to maintain the capacity and performance which the water project was designed to achieve. The term does not include major rehabilitation, repair or replacement of any capital or fixed assets of a water project.

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

**NAC 445A.6755 “Safe Drinking Water Act” defined. (NRS 445A.270)** “Safe Drinking Water Act” has the meaning ascribed to it in NRS 445A.240.

**NAC 445A.675515 “State Environmental Review Process” (NRS 445A.160)** “State Environmental Review Process” means a process which has been approved by EPA and is available from the Division that specifies the Division’s Environmental review process that is equivalent to the process in the National Environmental Policy Act of 1969, 42 U.S.C. §4321 et seq. and implementing regulations (40 C.F.R. Parts 1500 through 1508, inclusive).

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

**NAC 445A.67551 “Service connection” defined. (NRS 445A.270)** “Service connection” has the meaning ascribed to it in NAC 445A.66375.

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

**NAC 445A.67552 “Short-term loan” defined. (NRS 445A.270)** “Short-term loan” means a loan for which the term of repayment does not exceed 5 years.

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

**NAC 445A.67553 “Significant noncompliance” defined. (NRS 445A.270)** “Significant noncompliance” occurs when, on two or more occasions during any period of 12 consecutive months, a public water system:

1. Fails to report the results of monitoring for;
2. Fails to take a sample for; or
3. Exceeds the maximum contaminant levels of,

È any of the primary drinking water standards set forth in NAC 445A.453.

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

**NAC 445A.67554 “State clearinghouse” defined. (NRS 445A.270)** “State clearinghouse” means the process for review by the State as established pursuant to the Governor’s executive order concerning intergovernmental review of federal programs of August 15, 1989.

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

**NAC 445A.675545 “State median household income” defined. (NRS 445A.270)** “State median household income” means the median household income for this State.

(Added to NAC by Environmental Comm’n by R128-04, eff. 2-14-2005)

**NAC 445A.67555 “Transient water system” defined. (NRS 445A.270)** “Transient water system” has the meaning ascribed to it in NRS 445A.848.

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

**NAC 445A.67556 “User charge” defined. (NRS 445A.270)** “User charge” means:

1. Any charge levied on the users of a water project; or
2. Any portion of the ad valorem taxes that are paid by a user for his or her proportionate share of the cost of operation and maintenance of a water project, including, without limitation, replacement of the water project.

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

**NAC 445A.67557 “Water project” defined. (NRS 445A.270)** “Water project” has the meaning ascribed to it in NAC 445A.66585 and includes, without limitation, any project for which the debt obligations of a public water system may be bought or refinanced pursuant to 42 U.S.C. § 300j-12(f)(2).

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

**NAC 445A.67558 Process for public participation: Notice of workshop; contents of notice. (NRS 445A.270)**

1. The Division shall, as necessary, provide for a public participation process to provide interested or affected persons a reasonable opportunity to submit to the Division orally or in writing data, views or arguments upon proposed water projects or proposed actions or determinations of the Division.

2. Unless a hearing is required, the Division shall hold a workshop to satisfy the requirements of subsection 1.

3. The Division shall provide notice of the time and place set for the workshop not less than 15 days before the workshop, unless a longer period is required. The Division may provide such notice by:

(a) Publishing a single notice in a newspaper of general circulation in an area affected by the proposed action;

(b) Mailing the notice to each interested person who requests to be on a mailing list maintained by the Division;

(c) Mailing the notice to the appropriate federal and state agencies and municipalities; or

(d) Any other means reasonably calculated to provide such notice to the general public and any person who may be affected.

4. The notice must include:

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

(b) A description of any proposed action or determination of the Division;

(c) Reasons for any preliminary determination by the Division;

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

(e) The address where the written comments may be sent.

5. The Division shall clearly indicate the date by which any written comments concerning the subject of the workshop must be received by the Division to receive consideration.

6. In any notice that it provides and at the workshop, the Division shall clearly indicate what actions, if any, may result from the workshop.

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

**NAC 445A.67559 Procedure for review of actions taken by Division. (NRS 445A.270)**

1. An applicant or a recipient who has reason to believe that an action taken by an employee of the Division pursuant to NAC 445A.6751 to 445A.67644, inclusive, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee. The informal discussion must be scheduled for a date, place and time mutually agreed upon by the applicant or recipient and the Division, except that the informal discussion must be held no later than 30 days after the date on which the Division received the request.

2. If the informal discussion does not resolve the problem, the applicant or the recipient may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the Division for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the applicant or recipient and the Division, except that the informal conference must be held no later than 60 days after the date on which the Division received the written request.

3. If the informal conference does not resolve the problem, the applicant or the recipient may, within 10 business days after the date scheduled for the informal conference, submit a written request to the Administrator for a determination. The Administrator shall issue a determination not later than 30 days after the date on which the Administrator received the written request for a determination.

4. If the determination of the Administrator does not resolve the problem, the applicant or the recipient may, within 10 business days after the date the Administrator issues the determination, submit a written

request to the Director for a review of the determination of the Administrator. The Director shall issue a determination not later than 30 days after the date on which the Director received the written request for a review. An applicant or recipient may not appeal a determination of the Director. Such a determination is the final remedy available to the aggrieved applicant or recipient.

5. As used in this section, "Director" means the Director of the State Department of Conservation and Natural Resources.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.6756 Resolution of conflicting requirements; severability of provisions. (NRS 445A.270)**

1. To the extent that any of the provisions of NAC 445A.6751 to 445A.67644, inclusive, conflict with any of the provisions of NAC 445A.450 to 445A.6731, inclusive, the provisions of NAC 445A.450 to 445A.6731, inclusive, prevail.

2. If any of the provisions of NAC 445A.6751 to 445A.67644, inclusive, or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**Preliminary Procedures for Financing Water Projects and Other Authorized Activities**

**NAC 445A.67561 Eligibility for short-term or long-term loan for certain types and costs of water projects; limitations; extension of long-term loan. (NRS 445A.270, 445A.860)**

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;
- (f) Legal and financial services; 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 40 years or the life of the asset, whichever is shorter, under special conditions for a disadvantaged community.

9. As used in this section:

- (a) "Domestic use" has the meaning ascribed to it in NRS 534.013.
- (b) "Domestic well" means a well that supplies water for domestic use.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R194-08, 10-27-2009; R099-14, 10-24-2014)

**NAC 445A.67562 Eligibility for short-term loan for certain costs of water project; incorporation of loans. (NRS 445A.270)**

1. An applicant is eligible to receive a short-term loan from the Account for the Revolving Fund for costs concerning:

- (a) Planning and engineering to:
  - (1) Determine the causes of a problem of a public water system;
  - (2) Define potential solutions to a problem of a public water system; and
  - (3) Develop the information for the letter of intent required pursuant to NAC 445A.67577.
- (b) Conducting preliminary or reconnaissance engineering;
- (c) Preparing water project plans to satisfy the requirements of NAC 445A.450 to 445A.6731, inclusive;
- (d) Preparing environmental information for the process of environmental review pursuant to NAC 445A.6758 to 445A.67612, inclusive;
- (e) Preparing the information for the application required pursuant to NAC 445A.67613; or
- (f) Any other planning activity approved by the Division that is related to a water project.

2. At the time an applicant applies for a long-term loan, he or she may request that any short-term loan for which the applicant is liable be incorporated into the long-term loan.

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

**NAC 445A.67563 Ineligibility for financial assistance for certain costs associated with water project. (NRS 445A.270)** Unless expressly authorized by the federal government, the Division shall not provide financial assistance from the Account for the Revolving Fund for the following costs associated with a water project:



1. The construction or rehabilitation of a dam;
2. The purchase of water rights, unless the water rights are owned by a public water system that is being purchased in an effort to consolidate as part of a program to develop the capability of a water system;
3. The construction or rehabilitation of a reservoir other than:
  - (a) A finished water reservoir; or
  - (b) A reservoir that is part of the treatment process and is located on the property where the treatment facility is located;
4. Laboratory fees for routine monitoring of water quality;
5. Expenses for operations and maintenance;
6. A project needed primarily for fire protection;
7. A water project for a public water system that lacks adequate capability, unless the financial assistance will ensure that the system acquires adequate capability;
8. A water project for a system that is in significant noncompliance with NAC 445A.453, unless the financial assistance will ensure full compliance;
9. A project that is primarily intended to serve future growth;
10. Refinancing of a private system; or
11. A project that has received assistance pursuant to the provisions of 42 U.S.C. § 300j-12(i).  
(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67564 Eligibility for money to refinance water project. (NRS 445A.270)** An applicant is eligible to refinance a water project using money from the Account for the Revolving Fund if the current debt obligation satisfies the requirements of 42 U.S.C. § 300j-12(f)(2).

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

**NAC 445A.67565** Determination of a disadvantaged community; program to fund projects for a disadvantaged community

1. The Division shall determine which systems will qualify as a disadvantaged community for purposes set forth in 42 U.S. code §300j-12(d)(3). The definition developed by the Division must be included in the Intended Use Plan developed pursuant to NAC 445A.67575 and 445A.67576 . The definition may consider the following criteria: :
  - (a) the income data of the project service area,
  - (b) the population 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.
2. The Divisions must also determine any program to fund projects for a disadvantaged community. The program must be outlined in the Intended uUse pPlan developed pursuant to NAC 445A.67575 and 445A.67576 .
3. Prior to finalization of any definition of a disadvantaged community for inclusion in the Intended Use Plan, the Division will conduct a public workshop and obtain approval from the Board for Financing Water Projects.
4. Prior to any program to fund projects for a disadvantaged community, the Division will conduct a public workshop and obtain approval from the Board for Financing Water Projects.

**NAC 445A.67566 Solicitation and submission of proposals for water projects and requests to remain on priority list; duties following receipt; preapplication. (NRS 445A.270)**

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 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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67567 Priority list: Development; consideration of water projects for funding; revision. (NRS 445A.270)**

1. At least annually, the Division shall develop a statewide priority list of water projects from the solicitation process described in NAC 445A.67566. The Division shall prioritize the list to achieve water quality and public health goals consistent with the requirements of the Safe Drinking Water Act.

2. Only those projects that are included on the priority list will be considered for possible funding. Placement on the list does not guarantee that a project will receive funding.

3. If the Division receives a preapplication or a written request to remain on the priority list pursuant to the provisions of subsection 1 of NAC 445A.67566 after the annual statewide priority list of water projects has been developed, the Division may, after holding a public participation workshop pursuant to NAC 445A.67558 to allow for a period of public review and with the approval of the Board for Financing Water Projects, revise the priority list to include the water project.

4. If the Division receives a preapplication for a written request to be added to the priority list due to an "emergency situation," as defined by NAC 445A.67527, the Division may, with the approval of the Board for Financing Water Projects, revise the priority list after the Division has provided public notice of its intent to amend the priority list due to an emergency situation.

5. The Division may at any time after receiving approval from the Board for Financing Water Projects revise the ranking of a water project on a priority list if the Division receives information concerning a water project that was not available at the time the list was developed.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67568 Priority list: Considerations; contents. (NRS 445A.270)**

1. When establishing the priority list, the Division shall consider:

- (a) The needs of the public water system;
- (b) The types of corrective actions that are necessary to comply with state law or regulations;
- (c) Any relevant court orders concerning the public water system;
- (d) The total amount of money available in the Account for the Revolving Fund; and
- (e) Any other factors necessary to carry out the provisions of NAC

445A.67569, 445A.6757 and 445A.67571.

2. The priority list must include, without limitation:

- (a) The name of each public water system that the Division determines is eligible for financial assistance;
- (b) The priority assigned to each proposed water project;
- (c) A description of each water project;
- (d) An estimate of the eligible costs of each proposed water project based on the best information available at the time the priority list is developed; and
- (e) The existing population of the service area of each public water system at the time of application.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67569 Priority list: Criteria for ranking water projects; prioritizing requests for certain financial assistance. (NRS 445A.270)**

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;

(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, 5 points.

(2) For the water system having developed a rate structure appropriate to build, operate and maintain the system, 5 points.

(3) For the water system having specifically allocated money for the rehabilitation and replacement of aging or deteriorating facilities and equipment, 5 points.

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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.6757 Priority list: Approval required; public review and comment; development of final or revised list; correction of minor errors. (NRS 445A.270)**

1. Except as otherwise provided in subsection 4, the priority of water projects determined by the Division pursuant to NAC 445A.67567 to 445A.67571, inclusive, is subject to the approval of the Board for Financing Water Projects.

2. Except as otherwise provided in subsection 4 and 5, the Division shall hold a public participation workshop pursuant to NAC 445A.67558 to allow for a period of public review of and to comment on its proposed priority list or a revised priority list.

3. The Division shall consider comments and recommendations made in the public participation process in developing its final priority list or a revised priority list to be presented to the Board for Financing Water Projects.

4. The Division may, without obtaining the approval of the Board for Financing Water Projects or holding a public participation workshop, revise a priority list to correct minor typographical or technical errors.

5. The Division may, after obtaining the approval of the Board for Financing Water Projects, add projects to the priority list that meet the requirements for an “emergency situation,” as defined by NAC 445A.67527, without holding a public participation workshop.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm’n by R128-04, 2-14-2005)

**NAC 445A.67571 Priority list: Submission for review and possible approval; objections to proposed list. (NRS 445A.270)**

1. After the Division completes a public participation workshop, the Division shall submit the priority list to the Board for review and possible approval.

2. Any objection to the proposed priority list that 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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm’n by R099-14, 10-24-2014)

**NAC 445A.67573 Bypassing water project on priority list. (NRS 445A.270)**

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) 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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm’n by R099-14, 10-24-2014)

4. The Division may bypass a water project on the priority list in favor of a project that meets the definition of an “emergency situation,” as defined in NAC 445A.67527. The Division will provide notice of the emergency declaration to all applicants on the priority list that are being bypassed.

**NAC 445A.67574 Intended use plan: Incorporation of priority list; inclusion in application for capitalization grant agreement. (NRS 445A.270)** The priority list approved by the Board for Financing Water Projects will be incorporated into the intended use plan developed pursuant to NAC 445A.67575 and 445A.67576 and submitted with other required information to the EPA in the application for the annual capitalization grant agreement or an amendment to a capitalization grant agreement for the Account for the Revolving Fund.

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

**NAC 445A.67575 Intended Use Plan: Preparation; contents. (NRS 445A.270)** 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 in accordance with 42 U.S.C. §§ 300j-12(g)(2) and 300j-12(k). The Intended Use Plan must include a description of:

1.

2. 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:

(a) Capitalization grants, including funds for set-aside activities and principal forgiveness funds; and

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

2. How loan repayments will be made;

3. How interest earnings and bond proceeds will be handled;

4. The criteria and method used for the distribution of funds;
5. The financial status of the program;
6. The short- and long-term goals of the program;
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;
8. Any program for a disadvantaged community and the funds utilized for this type of assistance;
9. The definition of a disadvantaged community as defined by NAC 445A.67565.
- 10.. The method employed by the Division to rank water projects on the priority list;
11. Priority lists for:
  - (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
  - (b) Water projects that are eligible for funding in future years;
12. Procedures for altering the status of water projects on the priority list, including, without limitation, the addition of water projects addressing emergency situations; and
13. The process used to obtain public review of and comment on the intended use plan and a summary of responses to any substantial public comments received.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67576 Intended use plan: Public review and comment; availability of final plan. (NRS 445A.270)**

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 posted on the Internet website of the Division.
  - (a) The Division shall consider public comments when allotting funds in the Account for Set—Aside Programs and any program for disadvantaged communities,

**NAC 445A.675761 Application for capitalization grant; work plan. (NRS 445A.270)**

1. The Division shall submit to the EPA an application for the capitalization grant award to fund the Account for Set-Aside Programs either by itself or together with the application for the capitalization grant award to fund the Account for the Revolving Fund.
2. The Division shall develop and submit to the EPA a detailed work plan for each Set-Aside Program if the EPA requires such a plan.

**NAC 445A.67577 Filing of letter of intent. (NRS 445A.270)** After the priority list is approved by the Board for Financing Water Projects pursuant to NAC 445A.67571, each applicant on the priority list that wishes to proceed with an application for financial assistance for a proposed water project must file with the Division a letter of intent meeting the requirements of NAC 445A.67578.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67578 Letter of intent: Contents; mailing; effect when intent to proceed with project. (NRS 445A.270)**

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 submitted to the Division in a manner and form prescribed by the Division.

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. (Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67579 Preapplication conference. (NRS 445A.270)** The Division shall schedule a preapplication conference if:

- 1. The applicant requests a preapplication conference with the Division in the letter of intent filed pursuant to the provisions of NAC 445A.67578; or
- 2. The Division determines for good cause that a preapplication conference is needed. (Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

### **Environmental Review of Proposed Water Projects**

**NAC 445A.6758 Initiation of process of environmental review; preparation of plan for water project; prerequisite to offer of loan contract; changes in water project or environmental conditions. (NRS 445A.270, 445A.295)**

- 1. The Division shall initiate the process of environmental review after:
  - (a) Receiving a letter of intent from the applicant pursuant to the provisions of NAC 445A.67577 and 445A.67578; and
  - (b) The applicant informs the Division that the applicant is ready to proceed with the water project.
- 2. An applicant shall consult with the Division during the preparation of the plan for the water project to:
  - (a) Determine whether the Division shall require the applicant to evaluate alternatives to the proposed water project; and
  - (b) Identify potential environmental issues associated with the proposed water project.
- 3. The Division shall not offer a loan contract to an applicant for a water project until the process of environmental review is completed.
- 4. If, at any point during or after the process of environmental review, but before a loan contract is executed, the Division determines that the water project or environmental conditions have changed significantly from those that existed during the initial process of review, the Division may delay execution of the contract to complete an environmental review based upon the new information.



5. If, after a loan contract is executed, the Division determines that the water project or environmental conditions have changed significantly from those that existed during the initial process of review, the Division may delay the water project until the Division is able to determine the impact of the changes.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

#### NAC 445A.675805 State Environmental Review Process

1. The Division shall develop a state environmental review process based on the National Environmental Policy Act regulations to include procedures for designation of the following:
  - (a) Categorical exclusion
  - (b) Environmental assessment
  - (c) Finding of no significant impact
  - (d) Environmental Impact Statement
  - (e) Public Involvement
2. The development and any subsequent changes to the state environmental review process must undergo a public participation workshop and obtain approval from the Environmental Protection Agency.

#### **NAC 445A.67581 Conduct of new process of environmental review after completion of prior environmental review for water project. (NRS 445A.270, 445A.295)**

1. If the Division determines that an applicant has completed an environmental review for a water project:

(a) Within 5 years before the date on which the applicant notifies the Division that the applicant is ready to proceed with the water project pursuant to the provisions of NAC 445A.6758; and

(b) That substantially complies with the provisions of NAC 445A.6758 to 445A.67612, inclusive, the Division may not require the applicant to conduct a new process of environmental review pursuant to the provisions of NAC 445A.6758 to 445A.67612, inclusive.

2. If the Division does not require an applicant to conduct a new process of environmental review pursuant to the provisions of subsection 1, the Division shall conduct the procedures for public notice set forth in NAC 445A.67584, 445A.67589 and 445A.67612.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

#### **NAC 445A.67582 Categorical exclusion: Review of request; determination by Division. (NRS 445A.270, 445A.295)**

1. The Division shall review a request by an applicant for a categorical exclusion based on the environmental information provided by the applicant pursuant to paragraph (e) of subsection 1 of NAC 445A.67578 and any other relevant information that is submitted to the Division to determine whether:

(a) The water project is eligible for a categorical exclusion; or

(b) The Division shall require the applicant to file an environmental assessment pursuant to NAC 445A.67587.

2. If the water project is determined by the Division to be eligible for a categorical exclusion pursuant to NAC 445A.67583, the Division shall issue notice of its intent to grant a categorical exclusion pursuant to NAC 445A.67584.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

#### **NAC 445A.67583 Categorical exclusion: Eligibility of water project. (NRS 445A.270, 445A.295)**

1. To determine whether a water project is eligible for a categorical exclusion, the Division shall review the information included in the letter of intent filed by the applicant pursuant to NAC 445A.67578.

2. Projects that may be eligible for a categorical exclusion must be identified in the state environmental review process.

3. The following types of water projects are ineligible for a categorical exclusion:

(a) A water project that creates a new source of water supply;

- (b) A water project that results in more than a minor increase in the capacity of:
    - (1) The distribution system of a public water system; or
    - (2) A public water system to develop and treat water;
  - (c) A water project that is known or expected to have a significant effect on the quality of the environment, whether individually, cumulatively over time or in conjunction with other federal, state, local, or private actions.
  - (d) A water project that is known or expected to affect directly or indirectly:
    - (1) Recognized cultural resources;
    - (2) Habitats of endangered or threatened species; or
    - (3) Environmentally important natural resource areas, including, without limitation:
      - (I) Floodplains;
      - (II) Wetlands;
      - (III) Important farmlands;
      - (IV) Aquifer recharge zones;
      - (V) Scenic areas; or
      - (VI) Other resource areas;
  - (e) A water project that is known or expected to cause significant public controversy concerning the natural environment; or
  - (f) Additional actions ineligible for a categorical exclusion may be identified in the state environmental review process.
4. As used in this section, “capacity” means the physical or volumetric ability of the water system to deliver water to consumers.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm’n by R128-04, 2-14-2005)

**NAC 445A.67584 Categorical exclusion: Public notice; period for public comment. (NRS 445A.270, 445A.295)**

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 may be provided by:
  - (a) Publishing at least once in a newspaper of general circulation throughout the area affected;
  - (b) Distributing 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;
  - (e) The time that the Division will allow for public comment; and
  - (f) The address to which written comments may be sent.
5. The period for public comment concerning the determination that a water project is eligible for categorical exclusion is 15 days after the Division has provided the notice in the manner set forth in subsection 2.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm’n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67585 Categorical exclusion: Criteria for and effect of granting, reviewing and responding to public comments. (NRS 445A.270, 445A.295)**

1. The Division shall grant a categorical exclusion to an applicant if:
  - (a) The Division does not receive any significant comments pursuant to the notice it provides pursuant to NAC 445A.67584; and
  - (b) The water project is otherwise eligible for the categorical exclusion.
2. The Division shall review any comments that it receives pursuant to NAC 445A.67584 and respond to any comments which the Division determines are significant before the Division:
  - (a) Makes its final determination concerning whether to grant the categorical exclusion; or
  - (b) Reaffirms a determination to grant a categorical exclusion that the Division had previously granted pursuant to NAC 445A.67586.
3. After the Division grants a categorical exclusion, no further action is required by the Division or the applicant concerning the process of environmental review.
4. If any issues or objections raised pursuant to the comments submitted to the Division pursuant to NAC 445A.67584:
  - (a) Are resolved, the Division may grant the categorical exclusion.
  - (b) Remain unresolved and the Division determines that a water project is ineligible for a categorical exclusion, the applicant shall prepare an environmental assessment pursuant to NAC 445A.67587.  
(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67586 Categorical exclusion: Reevaluation of decision by Division to grant exclusion. (NRS 445A.270, 445A.295)**

1. If 5 years or more have passed since the Division has granted a water project a categorical exclusion and the Division has not yet recommended approval to the Board for Financing Water Projects, the Division shall reevaluate its decision to grant the exclusion, taking into consideration current environmental conditions and public views.
2. If the Division finds as a result of the review it undertakes pursuant to subsection 1 that:
  - (a) No significant changes have occurred since the Division granted the original categorical exclusion, the Division shall, before executing a loan, issue a notice of its intention not to rescind its grant of the categorical exclusion pursuant to the procedures set forth in NAC 445A.67584 and 445A.67585.
  - (b) Additional information is necessary, the Division may require the applicant to file an environmental assessment and follow any additional requirements of the process of environmental review set forth in NAC 445A.67587 to 445A.67612, inclusive.  
(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67587 Environmental assessment: Preparation; contents; public review and comment; submission. (NRS 445A.270, 445A.295)**

1. If the Division determines that a water project is ineligible for a categorical exclusion, the Division shall initiate the environmental assessment process for the water project. The environmental assessment may make reference to specific sections of the application in lieu of duplicating information found in the application.
2. The scope of the environmental assessment is detailed in the state environmental review process.
  - (a)
3. The environmental assessment must describe alternatives considered and any significant environmental effects that the proposed water project may have.
4. Water projects funded from the Account for the Revolving Fund must conform to any state implementation plan or air quality management district plan approved or promulgated pursuant to 42 U.S.C. §§ 7401 et seq.
5. The Division shall make the draft environmental assessment available for review and comment by the public in a public participation process conducted pursuant to the provisions of NAC 445A.675875.

6.

**NAC 445A.675875 Draft environmental assessment: Process for public participation; notice of workshop; period for public comment. (NRS 445A.270, 445A.295)**

1. An applicant shall, as necessary, provide for a public participation process to provide interested or affected persons a reasonable opportunity to submit to the applicant, orally or in writing, data, views or arguments upon a draft environmental assessment for a proposed water project.

2. The applicant shall provide notice of the time and place set for the workshop not less than 15 days before the workshop. The applicant may provide such notice by:

(a) Publishing a single notice in a newspaper of general circulation in the area affected by the proposed water project;

(b) Mailing the notice to each interested person who requests to be on a mailing list maintained by the Division;

(c) Mailing the notice to the appropriate federal and state agencies and municipalities; or

(d) Any other means reasonably calculated to provide such notice to the general public and any person who may be affected by the proposed water project.

3. The notice must include:

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

(b) The time that the applicant will allow for public comments; and

(c) The address where the written comments may be sent.

4. The minimum period for public comment concerning the draft environmental assessment for a water project is 30 days after the applicant has provided the notice in the manner set forth in subsection 2.

5. The applicant shall clearly indicate the date by which any written comments concerning the subject of the workshop must be received by the applicant to receive consideration.

(Added to NAC by Environmental Comm'n by R128-04, eff. 2-14-2005)

**NAC 445A.67588 Draft environmental assessment: Action following consideration by Division. (NRS 445A.270, 445A.295)**

1. After the Division completes the draft environmental assessment and considers public comments offered pursuant to the public participation process which were submitted to the Division pursuant to the provisions of the state environmental review process, the Division shall issue:

(a) A preliminary finding of no significant impact pursuant to NAC 445A.67589 to 445A.67592, inclusive; or

(b) A notice of intent to prepare an environmental impact statement pursuant to NAC 445A.67593 to 445A.67612, inclusive.

2. After an applicant has received a notice of intent to prepare an environmental impact statement pursuant to paragraph (b) of subsection 1, the applicant may request that the proposed water project be partitioned into two or more discrete components for the purposes of the process of environmental review pursuant to NAC 445A.67593.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67589 Finding of no significant impact: Public notice; period for public comment. (NRS 445A.270, 445A.295)**

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 may 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

(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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.6759 Finding of no significant impact: Criteria for issuance; response to public comments. (NRS 445A.270, 445A.295)**

1. The Division shall issue a finding of no significant impact to an applicant if:

(a) The Division does not receive any significant comments pursuant to the notice it provides pursuant to NAC 445A.67589; and

(b) The water project is otherwise eligible for a finding of no significant impact.

2. The Division shall review any comments that it receives pursuant to NAC 445A.67589 and respond to any comments which it deems significant before the Division completes the process of environmental review and makes its final determination of whether to issue a finding of no significant impact.

3. After the Division issues a finding of no significant impact, no further action is required by the Division or the applicant concerning the environmental review.

4. If any issues or objections raised pursuant to the comments submitted to the Division pursuant to NAC 445A.67589:

(a) Are resolved, the Division may issue a finding of no significant impact.

(b) Remain unresolved and the Division determines that a water project is ineligible for a finding of no significant impact, the applicant shall prepare and submit an environmental impact statement pursuant to NAC 445A.67594 to 445A.67612, inclusive.

5. If an applicant is required to prepare an environmental impact statement pursuant to paragraph (b) of subsection 4, the applicant may request that his or her proposed water project be partitioned into two or more discrete components for the purposes of the process of environmental review pursuant to NAC 445A.67593.

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

**NAC 445A.67591 Finding of no significant impact: Reevaluation of decision by Division to issue finding. (NRS 445A.270, 445A.295)**

1. If 5 years or more have passed since the Division has issued a finding of no significant impact to a water project and the Division has not yet recommended approval to the Board for Financing Water Projects, the Division shall reevaluate its decision to issue the finding, taking into consideration current environmental conditions and public views.

2. If the Division finds as a result of the review it undertakes pursuant to subsection 1 that:

(a) No significant changes have occurred since the Division originally issued the finding of no significant impact, the Division shall, before executing a loan contract, issue a notice to the public of its intention not to rescind its finding of no significant impact pursuant to the procedures set forth in NAC 445A.67589.

(b) Additional information is necessary to supplement the original environmental assessment, the Division may require the applicant to prepare and submit an environmental impact statement pursuant to NAC 445A.67594 to 445A.67612, inclusive.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67592 Execution of loan contract following finding of no significant impact. (NRS 445A.270, 445A.295)**

1. After the Division has issued a finding of no significant impact to an applicant pursuant to NAC 445A.6759, the Division may execute a loan contract with the applicant pursuant to NAC 445A.67617 to 445A.67623, inclusive.

2. The Division shall ensure that the applicant will carry out any mitigation measures that the Division requires by conditioning the applicant's receipt of financial assistance upon the applicant's carrying out the mitigation measures.

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

**NAC 445A.67593 Partitioning of water project into discrete components: Request; requirements; determination by Division; restriction on loan contract. (NRS 445A.270, 445A.295)**

1. An applicant may request that the Division allow the applicant to partition a water project into two or more discrete components if:

(a) The Division has determined that it will require the applicant to prepare and submit an environmental impact statement for the entire proposed water project pursuant to NAC 445A.67594 to 445A.67612, inclusive;

(b) The applicant has identified for the Division the reasonable alternatives to the entire proposed water project; and

(c) The remainder of the proposed water project satisfies the requirements of NAC 445A.67587 to 445A.67612, inclusive.

2. Each discrete component of a proposed water project that is partitioned pursuant to subsection 1 is subject to the process of environmental review.

3. The requirements for partitioning submitted pursuant to subsection 1 are identified in the state environmental review process. 5. Upon receiving a request to partition a proposed water project, the Division shall determine whether partitioning is appropriate pursuant to this section.

6. If the Division partitions an applicant's water project, the Division may execute a loan contract with the applicant to fund only any portion of the project that the Division has approved pursuant to NAC 445A.67617 to 445A.67623, inclusive.

7. If the Division determines that partitioning:

(a) Is appropriate, the Division shall prepare and issue a finding of no significant impact for the discrete component pursuant to the procedures set forth in NAC 445A.67589 to 445A.67592, inclusive.

(b) Is not appropriate, the Division shall provide the applicant with notice of its determination.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67594 Environmental impact statement: When required. (NRS 445A.270, 445A.295)**

The Division shall require an applicant to prepare and submit an environmental impact statement if the Division determines that:

1. The applicant's proposed water project is not eligible for a categorical exclusion or a finding of no significant impact; and

2. The water project is known or expected to:

(a) Have a significant effect on the quality of the environment, individually, cumulatively over time or in conjunction with other federal, state, local or private actions; or

(b) Affect, directly or indirectly, recognized:

(1) Cultural resources;

(2) Habitats of endangered or threatened species;

(3) Environmentally important natural resource areas, including, without limitation:

(I) Floodplains;

(II) Wetlands;

(III) Environmentally significant agricultural land;

(IV) Aquifer recharge zones;

(V) Scenic areas; or

(VI) Other resource areas.

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

**NAC 445A.67595 Environmental impact statement: Public notice; meeting of interested parties; preparation of draft. (NRS 445A.270, 445A.295)**

1. After the Division determines that it shall require an applicant to prepare and submit an environmental impact statement for a proposed water project, the Division shall provide notice of its intent to require the applicant to prepare an environmental impact statement.

2. The notice provided pursuant to subsection 1 may 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.

3. The notice issued pursuant to subsection 1 must include, without limitation:

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

(b) Reasons supporting the Division's determination to require the applicant to prepare and submit an environmental impact statement for the proposed water project; and

(c) The address of the applicant so that interested persons can file comments or inquire about the time and location of any meetings which are scheduled to discuss alternatives to the proposed water project.

4. As soon as possible after the Division provides the notice required pursuant to subsection 1, the applicant in consultation with the Division shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the Division and any other interested party to determine the scope of the environmental impact statement. Additional requirements of the meeting are set forth in the state environmental review process.

5.

5. As soon as possible after the meeting required pursuant to subsection 4, the applicant in consultation with the Division shall document as part of the environmental impact statement:

(a) The issues concerning the proposed water project that were raised at the meeting;

(b) An evaluation of any viable methods of addressing the issues raised at the meeting;

(c) Any additional issues that are raised while evaluating the issues raised at the meeting and an evaluation of any viable methods of addressing these new issues; and

(d) Any issues raised at the meeting that the applicant decides are not relevant to the water project.

6. The applicant shall prepare, or have prepared, a draft environmental impact statement for the water project. The applicant shall pay the costs of preparing the draft environmental impact statement.

7. If a federal agency is required by law to prepare an environmental impact statement, the Division and the applicant are not required to pay the costs of preparing the environmental impact statement and shall cooperate with the federal agency in preparing the statement.

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

**NAC 445A.67596 Environmental impact statement: Public workshops; additional procedures for ensuring public participation. (NRS 445A.270, 445A.295)**

1. The Division shall schedule and hold public workshops concerning an environmental impact statement pursuant to NAC 445A.67558, and the Division shall provide notice of each workshop not less than 30 days before the date of the workshop.

2. The Division shall schedule not less than two public workshops concerning an environmental impact statement.

3. The Division shall hold a public workshop only after alternatives to a proposed water project have been developed but before a draft of the environmental impact statement is done.

4. The Division may institute any additional procedures for ensuring public participation as it determines are necessary.

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

**NAC 445A.67597 Environmental impact statement: Distribution of draft by applicant; public notice of availability of draft; period for public comment. (NRS 445A.270, 445A.295)**

1. 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.
2. The notice provided pursuant to subsection 1 may 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.
3. 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.
4. 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 2.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67598 Environmental impact statement: Issuance of final determination of completion of environmental review; response to public comments. (NRS 445A.270, 445A.295)**

1. If no significant comments are received by the Division within 45 days, the Division may issue its final determination that the process of environmental review is complete.
2. The Division shall:
  - (a) Review all comments that it receives within the time prescribed in NAC 445A.67597;
  - (b) Respond to any of those comments which it deems significant; and
  - (c) Provide those responses to the applicant for incorporation into the final environmental impact statement.

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

**NAC 445A.67599 Environmental impact statement: Fee for copies of documents. (NRS 445A.270, 445A.295)** The Division:

1. Shall, upon the request of any person, provide that person with a copy of any version of the environmental impact statement or any supporting documents; and
2. May charge a reasonable fee, not to exceed the cost of reproduction, for each copy.

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

**NAC 445A.6761 Preparation of final environmental impact statement. (NRS 445A.270, 445A.295)** An applicant shall prepare or have prepared a final environmental impact statement after the time for public comment and public workshops concludes and after considering any comments received during the process for public participation. The final environmental impact statement must consist of:

1. The draft environmental impact statement;
2. Copies of all written comments and summaries of all oral comments received concerning the draft environmental impact statement;
3. The names and addresses of all persons who commented on the draft environmental impact statement;
4. Copies of any responses to comments provided by the Division pursuant to NAC 445A.67598; and
5. Any other information deemed appropriate by the Division.



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

**NAC 445A.67611 Completion of process of environmental review; compliance with mitigation; prerequisites to execution of loan contract; changes in design or environmental conditions. (NRS 445A.270, 445A.295)**

1. After an applicant submits a final environmental impact statement to the Division, the Division shall complete the process of environmental review by:

- (a) Reviewing the final environmental impact statement; and
- (b) Issuing a record of decision that identifies any appropriate mitigation.

(c) Publishing a concise public record of decision: state the decision, identify alternatives considered, state whether all practicable means to avoid or minimize environmental harm have been adopted. The Division shall certify in the record of decision that the agency has considered all of the alternatives, information, analyses, and objections. 2. The Division shall condition the loan contract upon compliance by the applicant with that mitigation.

3. A loan contract may be executed only after the Division has issued the record of decision and the Board for Financing Water Projects has approved the water project.

4. Any changes in design or environmental conditions that were not considered in the process of environmental review are subject to the provisions of NAC 445A.6758.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67612 Reevaluation of decision by Division regarding final environmental impact statement. (NRS 445A.270, 445A.295)**

1. If 5 years or more have passed since the Division has issued its record of decision regarding a final environmental impact statement and the Division has not yet recommended approval to the Board for Financing Water Projects, the Division shall reevaluate its decision, taking into consideration current environmental conditions and public views.

2. If the Division finds, as a result of its review pursuant to subsection 1, that no significant changes have occurred since the original record of decision was made, the Division shall, before executing a loan contract, issue a notice of its intention not to change the original record of decision. The Division may:

- (a) Publish the notice at least once in a newspaper of general circulation throughout the area affected;
- (b) Provide the notice to persons potentially affected by the water project, including adjacent landowners;
- (c) Mail the notice to each person included on the mailing list maintained by the Division for the water project;
- (d) Provide the notice to appropriate federal agencies; or
- (e) Submit the notice to the state clearinghouse for review by other state and federal agencies.

3. The notice must include:

- (a) A description of the proposed water project, including its location;
- (b) Information regarding the availability of the original environmental impact statement;
- (c) The material upon which the Division relied for the issuance of the notice and the address where that material may be reviewed;
- (d) The time allowed for public comments regarding the notice; and
- (e) The address where written comments may be sent.

4. The period for public comments concerning the notice of the intention of the Division not to change the original record of decision is 30 days after the Division has provided the notice in the manner set forth in subsection 2.

5. If no significant comments are received by the Division within the time prescribed in subsection 4, the Division may issue its record of decision that the process of environmental review is complete.

6. If the Division finds, as a result of its review pursuant to subsection 1 or its receipt of information pursuant to subsection 4, that additional information is necessary to supplement the original environmental impact statement, the process of environmental review for the water project must comply with the procedure set forth in NAC 445A.67594 to 445A.67612, inclusive.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

### **Filing, Review and Approval of Applications for Financial Assistance**

#### **NAC 445A.67613 Filing and contents of application; submission of additional information. (NRS 445A.270)**

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.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

(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 money in the Account for the Revolving Fund;
  - (5) Completion of the construction phase; and
  - (6) Initiation of the operation of the water project.
- (n) 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 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) 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.
- (v) Security for the loan, if applicable.
- (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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67614 Initial evaluation of application. (NRS 445A.270)**

1. Upon receipt of an application, the Division shall evaluate:

(a) The application to determine whether the applicant submitted all the information required pursuant to NAC 445A.67613;

(b) The ability of the public water system to provide for:

(1) The continuing replacement of components of the public water system that are functionally obsolete or worn out;

(2) Current and anticipated debt service; and

(3) Current and future expenses of operation and maintenance;

(c) The capability of the public water system to remain in compliance with the Safe Drinking Water Act and NAC 445A.450 to 445A.6731, inclusive;

(d) Whether adequate collateral, if it was required, has been provided by the applicant to secure the loan;

(e) The sources that the applicant will draw on to repay the loan so that the Division may determine whether the sources are of sufficient amount and certainty to repay fully the loan and provide for the upkeep of the public drinking water system; and

(f) Whether the water project is consistent with any comprehensive planning and zoning provisions applicable to the area, including, without limitation, management plans, development plans and county planning activities.

2. If the applicant is a utility subject to the jurisdiction of the Public Utilities Commission of Nevada, an order by the Public Utilities Commission of Nevada authorizing a surcharge pursuant to NAC 704.600 for the water project is sufficient to satisfy the requirements of this section.

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

**NAC 445A.67612 Use of value engineering; submission of water project for peer review. (NRS 445A.270)**

1. 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 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 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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R099-14, 10-24-2014) — (Substituted in revision for NAC 445A.67631)

**NAC 445A.67614 System of user charges. (NRS 445A.270)** Any system of user charges proposed by 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.

4. The Division may require a reserve account for capital replacement and or debt service to satisfy financial capacity requirements within the system as set forth in NAC 445A.67614(1)(b).

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014) — (Substituted in revision for NAC 445A.67632)

**NAC 445A.676146 Use of rate structures for repayment of loan. (NRS 445A.270)**

1. If the Division determines that it is necessary for an applicant to impose a separate rate structure to repay a loan for a water project, the 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 an applicant intends to use an existing rate structure for a public water system to repay a loan, the 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 applicant to repay the loan.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R099-14, 10-24-2014) — (Substituted in revision for NAC 445A.67633)

**NAC 445A.67615 Completion of application; waiver of requirements for certain permits; submission of incomplete application. (NRS 445A.270)**

1. An application is complete when the Division determines that the applicant has supplied all the information required in this section and NAC 445A.67613.

2. Except as otherwise provided in subsections 3 and 4, an application is not complete until the Division receives:

(a) A copy of any permit necessary for compliance with planning and zoning requirements, including, without limitation, any necessary variances or special use permits; or

(b) A copy of any permit that an agency has issued that is a necessary prerequisite for the proposed water project to proceed.

3. The Division may waive the requirements of subsection 2 if it has received information from a reliable source that the proposed water project will receive or has received a permit required by any governmental agency.

4. The Division may, before it receives any permit required pursuant to subsection 2 which requires the submission of a detailed engineering design, recommend approval of an application if there are no foreseeable conditions that may make the proposed water project unfeasible.

5. If an applicant submits an incomplete application, the Division shall request that the applicant provide the required missing data or information. If the applicant does not provide the missing data or information, the Division shall notify the applicant in writing and specify what data or information is missing from the application. The applicant must supply the missing data or information not later than 60 days after the date the Division mails the written notice or the Division shall reject the application. If the applicant is rejected, he or she may reapply pursuant to the requirements set forth in NAC 445A.6751 to 445A.67644, inclusive.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67616 Additional documentation required with applications regarding certain water projects. (NRS 445A.270)** If a water project will serve two or more public water systems, the applicant shall submit with the application an executed copy of any interagency agreement, contract or other legally binding instrument that is necessary for the financing, construction and operation of the proposed water

project. This instrument must set forth the basis upon which costs are allocated, the formula by which costs are allocated and the manner in which the system of allocating costs will be administered.

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

**NAC 445A.67617 Rejection of application. (NRS 445A.270)** The Division shall reject an application if the applicant fails to:

1. Submit a complete application pursuant to NAC 445A.67613 and 445A.67614;
2. Provide documentary evidence that the applicant has access to dedicated sources of revenue that are sufficient, in the judgment of the Division, to ensure repayment of the loan;
3. Provide adequate collateral for the loan;
4. Demonstrate the legal, technical, managerial, institutional and financial capability to provide adequately for the operation, maintenance and replacement of the public water system during the term of the loan;
5. Demonstrate the technical, financial and managerial capability required for continuous compliance with the Safe Drinking Water Act and NAC 445A.450 to 445A.6731, inclusive; and
6. Carry out any mitigating measures that the Division has required.

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

**NAC 445A.67618 Preparation of written report. (NRS 445A.270)** Upon determining that an application is complete, the Division shall prepare a written report which includes:

1. An evaluation of the application;
2. The financial feasibility of the proposed water project;
3. The status of any funding available from the Account for the Revolving Fund;
4. A review and analysis of the creditworthiness of the applicant;
5. An analysis of the level of risk for the loan;
6. An opinion regarding the technical, managerial and financial capability of the applicant;
7. An evaluation of the capability of the public water system to remain in compliance with the Safe Drinking Water Act, chapter 445A of NRS and this chapter; and
8. Any other information deemed necessary by the Division.

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

**NAC 445A.67619 Final review of application; submission of written report and recommendation to Board for Financing Water Projects; request for hearing. (NRS 445A.270)** 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.
  - (e) If the entity is not issuing a bond, the applicant has executed agreements for the security and collateral required by the Division.
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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R099-14, 10-24-2014)

**NAC 445A.67622 Loan contract: Conditions for offer. (NRS 445A.270)** The Division shall not offer a loan contract to an applicant until:

1. The Board for Financing Water Projects has issued its approval of the water project to the applicant; and

2. The applicant has:

(a) Submitted to the Division a definite schedule for the water project which includes:

(1) A reasonable period to complete the water project after the commencement of bidding; and

(2) The times when funds are expected to be drawn from the Account for the Revolving Fund; and

(b) If collateral for the loan is required, provided the collateral.

(c) If additional security for the loan is required, provided the security.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67623 Loan contract: Conditions for execution. (NRS 445A.270)** The applicant and the Administrator may execute a loan contract only after any conditions to the commitment of financial assistance have been met.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R099-14, 10-24-2014)

**NAC 445A.67624 Fee for Award of Financial Assistance (NRS 445A.280)**

(a) The Administrator may impose and collect a fee from each public water system that receives a loan or other financial assistance from the Account for the Revolving Fund or the Account for Set-Aside Programs. The fee will be assessed as follows: For principal forgiveness loans to disadvantaged systems, no fee will be assessed.

(b) For principal forgiveness loans to non-disadvantaged systems, or short-term loans, a loan origination fee of \$1,000 will be assessed. The fee is due within 30 days of loan closing.

(c) For long-term loans to non-disadvantaged systems:

a. A loan origination fee of 0.50 percent of the original loan amount is due within 30 days of loan closing.

b. If the borrower is issuing a bond, an annual fee of 0.50 percent of the original loan amount, divided equally each year over the life of the loan, shall be collected on the first debt service of the state fiscal year.

c. If the borrower is not issuing a bond, an annual fee of 0.75 percent of the original loan amount, divided equally each year over the life of the loan, shall be collected on the first debt service of the state fiscal year.

### **Requirements for Water Projects**

**NAC 445A.676235 Submission of final set of plans and specifications for water project; examination by Division. (NRS 445A.270)**

1. Before advertising for bids, 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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014) — (Substituted in revision for NAC 445A.67621)

**NAC 445A.67624 Submission of certain documentation and information to Division before commencing construction of water project; issuance of notice to proceed. (NRS 445A.270)**

1. Before commencing the construction of a water project, a recipient shall submit to the Division:

- (a) Bidding schedules, estimated schedules of payment and any other information the Division deems necessary to determine the progress of the water project;
- (b) Proof of the receipt of all permits required to construct the water project;
- (c) Documentation that any procedures for purchasing and contracting required by a state agency or the Federal Government will be followed;
- (d) Agendas for any conferences regarding the water project held by the recipient before the commencement of bidding and construction;
- (e) Schedules for the design of the project, engineering, the procurement of materials, construction and any other activity related to the water project; and
- (f) Any other documents that the Division deems necessary.

2. The recipient shall, at least 5 days before holding any conference described in paragraph (d) of subsection 1, notify the Division of the date, time and location of the conference.

3. The recipient shall not commence the construction of the water project until receipt from the Division of a notice to proceed with the water project. The Division may issue such a notice only after:

(a) The recipient has complied with the provisions of subsection 1 to the satisfaction of the Division; and

(b) The Division has examined and approved the final set of plans and specifications for the water project pursuant to NAC 445A.676235.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67626 Disbursement of money pursuant to loan: Submission of requests and documentation demonstrating appropriate distribution by recipient; requirements. (NRS 445A.270)**

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 documentation demonstrating that any prior disbursements of money pursuant to the loan have been distributed by the recipient in an appropriate manner.

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

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

(b) Copies of the cancelled checks issued by the recipient, <sup>Ê</sup> for the payment of reimbursable costs.

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

4. The approval of each payment must be based on the actual reimbursable costs incurred to date.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67627 Submission of certain documents and information to Division upon completion of water project; availability of unused amount of loan. (NRS 445A.270)**

1. After a recipient has completed a water project, the recipient shall submit to the Division for its approval:

(a) A final engineering report that describes the water project as it was constructed;

(b) Drawings of the water project as it was built which depict any material changes from the initial plans for the water project;

(c) The dates the water project was tested, accepted and placed into service;

(d) A notice of completion of the water project; and

(e) A statement of the final costs for the water project.

2. The recipient may submit its final request for disbursement of the loan only after the Division has approved the final engineering report submitted pursuant to subsection 1.

3. Upon completion of the requirements of subsection 1 and payment of the final request submitted pursuant to subsection 2, any amount of the sum authorized for the loan that is not disbursed will be made



available to other applicants who have requested financial assistance from the Account for the Revolving Fund.

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

**NAC 445A.67628 Adoption by reference of certain accounting pronouncements; maintenance of separate accounts for water projects. (NRS 445A.270)**

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 from the Governmental Accounting Standards Board free of charge at the Internet address <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. The pronouncements are available, free of charge, from the Financial Accounting Standards Board at the Internet address <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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67629 Maintenance of records and accounts. (NRS 445A.270)**

1. A recipient shall:

(a) Establish an official file for the water project, which must contain an adequate record of all significant actions relating to the water project;

(b) Establish accounts that accurately and adequately show all amounts of money:

(1) Received as financial assistance from the Account for the Revolving Fund;

(2) Received and spent on the water project; and

(3) Received as income from the water project;

(c) Establish a system of accounting, which ensures that the total costs of the water project, including all direct and indirect costs, are recorded accurately;

(d) Establish and maintain such other accounts and records as are required by the Division to comply with requirements for reporting established by the Federal Government; and

(e) Retain all records relating to the water project for at least 3 years after final repayment of financial assistance has been made or for any longer period required by the Division.

2. Any records of a recipient relating to a water project must be made available at any reasonable time for inspection or copying by any authorized representative of the Division.

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

**NAC 445A.6763 Audit of financial records relating to water project. (NRS 445A.270)**

1. Whenever an audit is required by federal law or by an agency of the Federal Government, or whenever the Division determines that an audit is necessary to ensure the integrity of the Account for the Revolving Fund, the Division may require that an audit be performed of financial records relating to a water project.

2. Any audit required pursuant to this section must be performed at the expense of the recipient by a certified public accountant who is independent of the recipient.

3. A report of the audit must be prepared by the auditor required pursuant to subsection 2 in the form prescribed by the Division.

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

NAC 445A.67633 Compliance with federal law regarding materials procurement (NRS 445A.270)

1. *Funds made available from the program may not be used for a project for the construction, alteration, or repair of a public water system unless all of the federally defined materials within 42 U.S. code §300j-12(a)(4) used in the project are produced in the United States.*

**NAC 445A.67634 Construction contracts for public water system that is publicly owned: Compliance with certain requirements; resolution of disputes related to bidding. (NRS 445A.270)**

If a public water system is publicly owned:

1. The recipient must comply with any applicable provisions of chapter 338 of NRS, chapter 338 of NAC and all applicable federal laws and regulations regarding the award and administration of contracts for water projects.

2. The recipient shall ensure compliance with all legal requirements for advertising for bids and awarding construction contracts.

3. The Division may review the awards to ensure that the recipient and its consultants and contractors have complied with any applicable federal and state laws.

4. The recipient is solely responsible for the resolution of any disputes relating to bidding. The Division shall not participate in the resolution of such a dispute.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67635 Compliance with federal and state law regarding labor and wages. (NRS 445A.270)**

1. A recipient shall comply with the provisions of the Davis-Bacon Act, 40 U.S.C. §§ 276a et seq., if they apply the applicable provisions of chapter 338 of NRS and all other applicable state and federal labor laws.

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

**NAC 445A.67636 Participation by disadvantaged businesses: Generally. (NRS 445A.270)**

1. A recipient shall comply with the requirements of federal law concerning the participation of disadvantaged businesses.

2. Each recipient shall attempt to comply with the fair share percentages established annually for disadvantaged businesses by the Division and the EPA. A recipient not meeting these goals shall submit evidence of compliance with the affirmative steps identified in NAC 445A.67637.

3. A recipient shall submit with his or her request for approval to award a construction contract, a report of participation by disadvantaged businesses in the form prescribed by the Division. If the low bidder on any construction contract does not meet the fair share requirements for disadvantaged businesses, the recipient shall submit to the Division evidence of compliance by the bidder with the affirmative steps identified in NAC 445A.67637.

4. A recipient shall submit to the Division, in the form prescribed by the Division, a report of participation by disadvantaged businesses following any quarter during which a procurement of \$10,000 or more is executed for the water project. As used in this subsection, "quarter" means a quarter in the federal fiscal year.

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

**NAC 445A.67637 Participation by disadvantaged businesses: Awarding of subcontracts. (NRS 445A.270)**

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 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.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.67638 Notification of Division: Award of prime construction contract; steps in construction; beginning of operation of project. (NRS 445A.270)**

1. A recipient shall notify the Division in writing within 5 working days after the award of the prime construction contract for the water project.

2. A recipient shall notify the Division promptly in writing of:

- (a) The beginning of construction of the water project;
- (b) Any substantial change in the scope of the water project and each executed change order;
- (c) The date on which construction of the water project is anticipated to be completed;
- (d) The cessation of all major construction work on the water project where the cessation of work is expected to or does continue for 30 days or more;
- (e) Any circumstance or condition that is expected to or does delay the completion of construction for 90 days or more after the anticipated date of completion of construction of the water project;
- (f) The completion of construction of the water project; and
- (g) The beginning of the operation of the water project.

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

**NAC 445A.67639 Oversight inspections. (NRS 445A.270)** The Division may conduct oversight inspections during the construction of a water project to ascertain that the recipient is constructing the project according to the approved plans and specifications and applicable contract requirements.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

**NAC 445A.6764 Submission to Division of manual of operations and maintenance for water project. (NRS 445A.270)** Not later than 90 days after a water project is completed, the recipient shall submit to the Division a draft of the manual of operations and maintenance for the water project required pursuant to NAC 445A.6667.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005)

**NAC 445A.67641 Submission to Division of set of as-built drawings of water project. (NRS 445A.270)** No later than 90 days after the completion of a water project, the recipient shall supply the Division with one set of drawings of the water project as it was built.

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

**NAC 445A.67642 Final inspection and certification of performance of water project; corrective action. (NRS 445A.270)**

1. After completion of the water project and before a recipient submits certification of a water project required pursuant to subsection 2, the recipient shall coordinate with the Division a final inspection of the water project to ensure that the facilities of the water project are operating and capable of satisfying the applicable requirements for public health and water quality.

2. Within a specified period agreed upon by the Division after the completion of a water project, the recipient shall certify to the Division that the water project meets all applicable performance standards. At the request of a recipient, the Division may assist the recipient in developing applicable performance standards.

3. If the recipient is not able to provide the certification required pursuant to subsection 2 because the water project does not meet applicable performance standards:

- (a) The recipient shall prepare a report of corrective action that provides:

- (1) An analysis of the cause of the failure of the water project to meet performance standards; and
- (2) An estimate of the nature, scope and cost of necessary corrective action.

(b) The Division shall conduct follow-up inspections as necessary to determine whether the water project meets performance standards.

4. If the cost of corrective action exceeds the amount of money loaned to the recipient, the recipient shall only receive additional money to pay for the increased costs if the recipient applies to, and is approved by, the Board for Financing Water Projects for the additional money.

5. One year after the date specified in the notice of completion of the water project, the recipient shall report to the Division concerning whether the water project:

- (a) Meets applicable performance standards; and
- (b) Complies with all applicable design specifications and requirements for public health and water quality.

6. As used in this section, "performance standards" means the criteria used to evaluate the compliance of a water project with:

- (a) The requirements contained in design specifications; and
- (b) The applicable requirements of chapter 445A of NRS and this chapter.

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

**NAC 445A.67643 Claims arising from or related to water project: Notification of Division; resolution. (NRS 445A.270)** A recipient:

1. Shall notify the Division of any claims against the owner, the professional engineer, the contractor or any subcontractor arising from or related to the water project; and

2. Is responsible for the resolution of those claims.

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

**NAC 445A.67644 Approval required to abandon, discontinue use of or dispose of water project. (NRS 445A.270)**

1. A recipient shall not abandon, substantially discontinue the use of or dispose of a water project during its useful life without the prior written approval of the Division.

2. As used in this section, "useful life" means the period during which a water project provides a service without becoming obsolete or inoperable.

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