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Dear Mr. Simpson,

On behalf of The Pew Charitable Trusts, I am writing to express our appreciation for the opportunity to comment on Nevada's Draft - Nevada 2016-2018 Water Quality Integrated Report (Integrated Report). Protecting the quality of our waters, especially in a climate changing world, is an imperative for both people and nature.

The Pew Charitable Trusts (Pew) seeks to preserve ecologically and culturally diverse U.S. public lands and rivers through federal, state, and tribal administrative protections, legislative designations, the defense of bedrock conservation laws, and restoring America's National Parks System. To accomplish these goals, we work closely with local businesses, recreational organizations, tribal governments, sportsmen and women groups, local governments, conservation groups, and other stakeholders to develop collaborative proposals for public lands and rivers protection.

Pew has a rich history of engagement in Nevada. Through our longstanding and trusted collaborations in the state, Pew has partnered with local organizations and decision makers to protect some of Nevada's wildest landscapes. In the past year, our program focus expanded to include protection of freshwater ecosystems, and we look forward to working with local stakeholders and the State to preserve Nevada's highest quality waters.

Nevada is the most arid state in the U.S. with an annual average precipitation of approximately 10 inches. Protecting the rivers flowing throughout Nevada means protecting vital drinking water sources, species such as the threatened Lahontan Cutthroat trout, migrating wildlife, and limited water resources that feed the Great Basin and Mojave deserts.

Below please find both overarching, general comments on the Integrated Report as well as specific comments on sections of the Integrated Report we found deserved highlighted attention. In addition, we have provided general comments supporting the Bureau of Water Quality Planning's (BWQP) plans to update Nevada's anti-degradation policy and develop implementation procedures, and we stand ready to work with the agency in these efforts.

General comments

Every two years the Nevada Division of Environmental Protection (NDEP) is required by the Clean Water Act (CWA) to conduct a comprehensive analysis of water quality data associated with Nevada's surface waters to determine whether state surface water quality standards are being met and designated uses are being supported. Nevada's Integrated Report must be prepared in accordance with the requirements of Sections 303(d)/305(b)/314 of the Clean Water Act and is intended for use by the public, local communities, and NDEP for water quality management planning purposes.

We commend BWQP for prioritizing the role that the Integrated Report plays in informing Nevada's citizens about the state's water quality. The first stated objective of the report is to "[e]ducate and inform citizens and public officials about overall quality of Nevada's surface waters," (p. 1). This perspective is illustrated throughout the report, including in the quality of the executive summary, the full narrative, and the companion map that BWQP provided to the public for comment. We believe that educating the residents of Nevada about this critical resource is the first step to preserving it for future generations.

Specific Section Comments

a. Section 2.3 Surface Water - Unassessed Waters

A comprehensive assessment of state waters is critical to understand and ensure sustainable management of the state's water resources. However, one of the greatest challenges for any state is to assess as many waters as possible, as frequently as possible. Nevada struggles with low assessment percentages for perennial streams (43%) and wetlands (41%). However, the assessment of Lakes/Reservoirs/Ponds is higher at 69.3 percent.

The findings of the Integrated Report are significantly limited because many waters have not been assessed and are thus, not included in the report. As such, the report does not adequately determine whether state water quality standards are being met and designated uses are supported on over half of the state's streams and wetlands.

Understanding that budget and staff limitations play a significant role in determining agency capacity to comprehensively assess Nevada's waters, we have two recommendations for BWQP to consider. First, we urge BWQP to solicit public input on which waters will be assessed each biennium. This may identify additional data sources, bring more expertise to the assessment, and highlight key waters that are in need of further attention from the agency. Second, regarding the reference to " fixed-station and rotating-basin design" on page 16, it is unclear whether the Bureau's "rotating-basin design" allows staff to assess all or most of the state's waters over time. If this is not a current practice, we further recommend that BWQP implement a plan to assess all waters over time on a rotating basis.

b. Section 4.5.4 Methodology Used to Evaluate Support of Beneficial Uses

i. Jurisdiction

The recent release of the replacement rule defining "waters of the United States,"[1] raises questions regarding which waters in Nevada are subject to Clean Water Act jurisdiction. We support the position that BWQP has taken in this report (Sec. 4.5.4, p.31) and previous Integrated Reports that NDEP does not have the authority to make jurisdictional determinations, and that unless the U.S. Army Corps of Engineers or U.S. Environmental Protection Agency (EPA) have made such determinations, the agency will continue to assess

[1] https://www.epa.gov/nwpr/navigable-waters-protection-rule-step-two-revise

the "waters of the state" as it has in the past.[2] The State's definition of "waters of the state"[3] is broader in scope than the impending definition of waters of the U.S., and it is our recommendation that BWQP assess as many "waters of the state" as possible and provide the results to the public even if this information is no longer required to be reported to U.S. EPA. Such an approach ensures that both the public and decision-makers have the information and data necessary to manage critical water resources.

ii. Tribal authority

Tribal authority is highlighted in the Integrated Report to explain why waterbodies on tribal lands were not included in the Integrated Report.[4] In Nevada, the U.S. EPA has delegated to three tribes the authority under the CWA to issue water quality standards for waters on tribal lands, and is reviewing proposals by three more tribes. More recently, the U.S. EPA finalized the rule that gives tribes the authority to administer the water quality restoration provisions of section 303(d) of the Clean Water Act, including assessing and reporting on impaired waters.[5] Yet, many tribal governments across the country have been assessing their own waters for years. The recognition of the sovereign rights on tribal lands to develop standards and assess their own waters regardless of U.S. EPA designations and permissions is fundamental. We applaud the BWQP's recognition of tribal sovereignty and thus, its decision to cede to tribal entities the responsibility to assess waters on tribal lands.

Although the state does not report on the status or impairment of these waters because of the tribal authority, we urge that where technical assistance may be needed and welcomed by the tribes to develop adequate program capacity under the newly granted 303(d) authority, that NDEP support such efforts. Section 303(d) of the Clean Water Act authorizes EPA to assist states, territories, and authorized tribes in listing impaired waters and developing Total Maximum Daily Loads (TMDLs) for these waterbodies. A TMDL establishes the maximum amount of a pollutant allowed in a waterbody and serves as the starting point or planning tool for restoring water quality.[6] Unless tribes have the capacity to assess their own waters, it is our recommendation that NDEP share any and all current and historical data that are relevant to each of the tribes in the state to help in their program implementation.

c. Attached Tables

The tables included in the Integrated Report provide a thorough summary of the waterbody assessments and we applaud the agency for its work in this regard. For instance, it is useful to highlight waters that continue to be on the list of assessed waters and those that are newly added (Attachment 1). The table which includes assessment results by waterbody and beneficial use allows the reader to scan particular beneficial uses of interest such as aquatic life, enhancement of water quality, propagation of wildlife, municipal and domestic water supplies, and more (Attachment 2). Finally, the 303(d) list compiles useful connections between pollutants of concern and beneficial use impairment as well as displaying the TMDL priority for each combination (Attachment 3).

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[2] 40CFR§130.7, 40CFR§130.8

[3] Nevada definition of "waters of the state": (NRS 445A.415) "Waters of the state" means all waters situated wholly or partly within or bordering upon the state, including but not limited to: 1. All streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems, and drainage systems; and 2. All bodies or accumulations of water, surface and underground, natural or artificial.

[4] 2016-18 IR, p32.

[5] https://www.epa.gov/tmdl/final-rule-treatment-indian-tribes-similar-manner-states-purposes-section-303d-clean-water-act

[6] https://www.epa.gov/tmdl

We would urge the agency, however, to reassess its priority ranking set forth in Attachment 3 regarding the establishment of Total Maximum Daily Loads (TMDLs). Currently, all TMDLs for the state are listed as low priority. The establishment of TMDLs is a fundamental part of the CWA and a necessary tool for bringing waters into compliance with CWA standards and retaining that compliance. We recommend that BWQP reassess its current decision to place all TMDLs into the low priority category, and instead create a list of priority – some high, some medium, and some low – waters in the process of TMDL development. We further recommend that such work be reflected in Attachment 3.

Antidegradation Policy

a. Identification of high quality or outstanding waters in the assessment process

The assessment required by the Clean Water Act in the form of this Integrated Report requires the state to identify both beneficial uses that are supported and those that are not supported by pollutant levels and watershed conditions. If BWQP finds that certain waters are not impaired, it follows that these waters meet or exceed water quality criteria for each beneficial use. We believe that such information is foundational in creating a list of high-quality waters that require protection against any degradation. The CWA calls for restoration and maintenance of the chemical, physical and biological integrity of the Nation's waters.[7] To that end, maintaining water quality should be a key component of the state's water quality program, yet much of the attention in state programs is directed to identifying and remediating impaired waters.

Nevada has laid out the basics for the antidegradation program in its statutes:

> **NRS 445A.565 Protection of surface waters of higher quality; treatment of and control over discharges constituting new or increased sources of pollution.**
>
> 1. Any surface waters of the State whose quality is higher than the applicable standards of water quality as of the date when those standards become effective must be maintained in their higher quality. No discharges of waste may be made which will result in lowering the quality of these waters unless it has been demonstrated to the Commission that the lower quality is justifiable because of economic or social considerations. This subsection does not apply to normal agricultural rotation, improvement or farming practices.

NRS 442A.565 goes on to describe, at a high level, how the agency will address both point and nonpoint sources in these higher quality waters.[8]

This antidegradation policy language was included in Nevada's 2004[9] and 2006[10] Impaired Waters Lists. Both of those Impaired Waters Lists went on to explain that antidegradation was "implemented by establishing *requirements to maintain existing higher quality* (RMHQ) whenever existing water quality for individual parameters is better than the criteria required to protect beneficial uses." Given that BWQP makes only passing reference to the statute or implementing language in the Integrated Report, we urge the agency to specify how RMHQs have been identified and protected in the intervening years.

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[7] 33 U.S.C. 1251(a) https://www.waterboards.ca.gov/public_notices/petitions/water_quality/docs/a2239/overview/References/AR-Refs%20(50).pdf

[8] https://www.leg.state.nv.us/nrs/nrs-445a.html#NRS445ASec565

[9] 2004 Impaired Waters List, https://ndep.nv.gov/uploads/documents/2004_303d-list_final_epa-approved_nov05.pdf

[10] 2006 Impaired Waters List, http://documents.wrwc.us/files/Nevada%20Division%20of%20Environmental%20Protection,%202008,%20Nevada%20303d%20Impaired%20Waters%20List..pdf

b. Nevada's Antidegradation policy update and EPA recommendation

The BWQP's "2018 Triennial Review Public Process to Solicit Comments on Nevada's Water Quality Standards" states that "adopt[ing] revisions to the State's antidegradation statute and submit[ing]an implementation plan" is at the top of the Bureau's list of intentions related to the next triennial review.[11] In addition, the EPA's 2017 Permit Quality Review proposed an action item focused on the finalization of the "updated antidegradation policy and [implementation of] the updated antidegradation procedures when issuing permits."[12]

We welcome the opportunity to engage with the stated process for revising the antidegradation statute and developing this implementation plan.

c. Outstanding National Resource Waters

Outstanding National Resource Waters (ONRWs) are one component of antidegradation under the CWA that has not been mentioned in any Nevada statute, regulation, or previous Integrated Reports. Federal regulations call for the maintenance and protection of waters of exceptional recreational or ecological significance. The federal regulations specifically state:

> (3) Where high quality waters constitute an outstanding National resource, such as waters of National and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.[13]

While the CWA does not require a state to designate ONRWs, most states choose to protect these special waters through a designation process. Given that Nevada is in the process of revising its antidegradation statute and developing an implementation procedure as referenced above, we urge the state to establish a process for identifying and maintaining the quality and characteristics of waters in Nevada worthy of ONRW designation. In several places in the Integrated Report, the state details the unique hydrology and topography of Nevada. Using the ONRW designation can help to protect these unique attributes of the State and assure long term protection of desirable ecological conditions.

We welcome the opportunity to work with and urge BWQP to develop a process for identifying and protecting the most treasured waters of Nevada that works within the state's existing and equally-unique social and economic realities.

d. "Waterbodies needing attention"

As part of the Integrated Report's Objective 5, which calls for "prioritizing waterbodies and parameters that need attention"(p. 5), we recommend that BWQP revisit the approaches from the 2004 and 2006 Impaired Waters Lists that recognized the role the assessment process plays in identifying waters exceeding standards and those attaining standards higher than necessary to protect designated uses. In light of the current effort to update the antidegradation policy and develop implementation procedures, we recommend revisiting the value and role of the "RMHQ list" and implementing a new ONRW program in the biennial assessment process and Integrated Report development.

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[11] https://ndep.nv.gov/uploads/water-wqs-docs/Triennial_Review_Web__2018_.pdf

[12] U.S.EPA Region 9, NPDES Permit Quality Review, State of Nevada, January 2018; https://www.epa.gov/sites/production/files/2018-05/documents/nv_pqr-2017.pdf

[13] 40 CFR§131.12(a)(3)

Thank you for the opportunity to comment. We look forward to future opportunities to comment and collaborate with the Bureau. If you have any questions, or need further information, please contact Carrie Sandstedt at csandstedt@pewtrusts.org or (775) 342-7367.

Sincerely,

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Project Director
U.S. Public Lands and Rivers Conservation
The Pew Charitable Trusts