



## REGION 9

SAN FRANCISCO, CA 94105

Jennifer Carr, P.E.  
Administrator  
Nevada Division of Environmental Protection  
901 S. Stewart Street, Suite 4001  
Carson City, Nevada 89701

Transmitted by Email Only

Subject: Approval of Nevada's Water Quality Standards - Antidegradation Policy and Requirements

Dear Administrator Carr,

Enclosed please find the U.S. Environmental Protection Agency's (EPA) approval of the Subject action, consistent with the Clean Water Act (CWA) section 303(c) and 40 C.F.R. Part 131. Supported by robust science and stakeholder engagement, the approved standards provide a critical framework for maintaining and protecting water quality in Nevada.

The approved standards take effect immediately for CWA purposes. Incorporated as part of this letter are Enclosure A (EPA's detailed analysis and rationale for approval) and Enclosure B (Text of Approved Standards).

I look forward to our continued partnership to protect and maintain Nevada's water quality. Please contact me at 415-972-3337 or [torres.tomas@epa.gov](mailto:torres.tomas@epa.gov) if you would like to discuss further, or your staff may contact Dave Guiliano at 415-947-4133 or [guiliano.dave@epa.gov](mailto:guiliano.dave@epa.gov).

Sincerely,

Tomás Torres  
Director, Water Division

### Enclosures

- A. EPA Review and Decision Rationale
- B. Text of Approved Standards

cc: Jason Kuchnicki, NDEP Water Quality Planning Bureau

## **Enclosure A**

### **EPA Review and Decision Rationale:**

#### **Nevada Antidegradation Policy Water Quality Standards to protect Nevada surface waters**

##### **I. Background**

Section 303 of the Clean Water Act (CWA), 33 U.S.C. § 1313, requires states to establish water quality standards (WQS) and to submit any new or revised standards to EPA for review and approval or disapproval. 40 C.F.R. Part 131. The Nevada Division of Environmental Protection (NDEP) process for adopting these new antidegradation requirements included public workshops and early opportunities for public comment between 2021-2022, followed by a Notice of Proposed Rulemaking of the WQS soliciting public comments on January 10, 2024.<sup>1,2,3</sup> The public comment period ended on February 2, 2024, with a second opportunity to comment from February 20, 2024 through March 16, 2024, as described in the hearing notice from the State Environmental Commission (Commission).

On February 1, 2024, NDEP provided notice of the Commission adoption hearing, which was held on March 21, 2024, where the amendments were approved. EPA finds the public participation procedures followed by the State in development and adoption of the revisions to its WQS are consistent with the procedural requirement set forth in 40 C.F.R. § 131.20(b). A certification from the Attorney General for Nevada, dated June 18, 2024, stated that the revisions were duly adopted pursuant to Nevada law.<sup>4</sup> EPA considered Nevada's submittal complete on July 2, 2024, when EPA received the submittal letter from NDEP. As discussed more fully below, where EPA has determined that Nevada's revisions are new or revised WQS, EPA has reviewed and acted on these revisions pursuant to section 303(c) of the CWA.<sup>5</sup>

Clean Water Act (CWA) Section 303(c) directs states to adopt WQS for waters that are subject to the CWA. The three core components of WQS are designated uses, water quality criteria, and an antidegradation policy. Antidegradation plays an integral role in maintaining and protecting water quality consistent with the CWA, and EPA regulations require states and authorized Tribes to adopt an antidegradation policy and develop antidegradation implementation methods. EPA reviews the WQS to determine if they are consistent with the CWA and with the factors listed at 40 C.F.R. § 131.5 and contain the minimum requirements listed at 40 C.F.R. §

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<sup>1</sup> NDEP. "Public Workshop R113-22, January 25, 2024." Document included in NDEP submittal package of WQS via email to Dave Guiliano at U.S. Environmental Protection Agency. Dated January 10, 2024.

<sup>2</sup> NDEP. "Notice of Workshops" (for Regulation R113-22). Document provided through NDEP Listserv and through the NDEP website. Included in NDEP submittal package of WQS via email to Dave Guiliano. Dated January 10, 2024.

<sup>3</sup> NDEP. "Notice of Workshops" (for Regulation R113-22). Document provided through NDEP Listserv and through the NDEP website. Received on August 17, 2022.

<sup>4</sup> Armstrong, Katie S., Deputy Attorney General, State of Nevada. Letter, Re: 40 CFR 131.6(e) Certification of Regulation R113-22. June 18, 2024.

<sup>5</sup> US Environmental Protection Agency. What is a New or Revised Water Quality Standard Under CWA 303(c)(3)? (EPA Publication No. 820F12017). October 2012.

131.6, including whether the state has adopted an antidegradation policy that is consistent with 40 C.F.R. § 131.12.

As detailed below, EPA finds that Nevada's adopted antidegradation requirements (Enclosure B) are consistent with 40 C.F.R. Part 131 and are approved pursuant to section 303(c) of the CWA.

## **II. EPA Analysis of the Submittal**

EPA regulations at 40 C.F.R. Part 131 require that states and authorized Tribes adopt an antidegradation policy and develop antidegradation implementation methods (AIMs) for maintaining and protecting water quality that has already been achieved. The antidegradation policy is a set of legally binding requirements included in the state's or authorized Tribe's WQS that describe the expectations for preventing or minimizing degradation to waters in a manner consistent with 40 C.F.R. § 131.12(a) (e.g., protections for existing uses, high quality waters, and outstanding national resource waters). AIMs refer to additional provisions or documents in which a state or authorized Tribe describes methods for implementing its antidegradation policy. The two together are referred to as antidegradation requirements. A State's or authorized Tribe's antidegradation policy must provide for protection of the three antidegradation categories (tiers) specified in 40 C.F.R. §131.12(a). When a state or authorized Tribe adopts or revises its antidegradation policy and AIMs as legally binding provisions, EPA reviews and approves or disapproves the policy and/or adopted AIMs as a new or revised WQS under CWA Section 303(c).

Although not required, states and authorized Tribes often adopt language similar to the provisions at 40 C.F.R. § 131.12(a) as their antidegradation policy. When a state or authorized Tribe chooses to develop its own antidegradation policy language, EPA's regulation requires that it be consistent with 40 CFR 131.12. Additionally, CWA Section 510 gives states and authorized Tribes the discretion to adopt antidegradation policies more stringent than required under the federal regulation.

Nevada developed antidegradation requirements (full text in Enclosure B), which EPA has reviewed and found to be consistent with the federal antidegradation requirements at 40 C.F.R. § 131.12. For the reasons outlined below, EPA finds that Nevada's Antidegradation requirements are consistent with 40 C.F.R. Part 131 and approves the new and revised WQS pursuant to CWA Section 303(c).

### **A. New and Revised WQS**

#### **40 C.F.R § 131.12: Antidegradation Policy and Implementation Methods**

##### **40 C.F.R § 131.12(a)(1): Protection of Existing Water Quality and Uses**

40 C.F.R. § 131.12(a)(1), or "Tier 1," requires the maintenance and protection of "existing instream water uses," and provides this minimum level of protection of water quality for all

waters of the United States. EPA regulations define “existing uses” at 40 C.F.R. 131.3(e) as “those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards.”

The Nevada Antidegradation Policy provides the following requirements for Tier 1 protection.

***Sec. 11. If a parameter of concern in a surface water or segment thereof is designated as having a tier 1 level of antidegradation protection, the Department:***

*1. Shall maintain and protect the water quality to meet the applicable water quality standards set forth in NAC 445A.11704 to 445A.2234, inclusive; and*

*2. May authorize a new or expanded point source discharge if the Department determines that the water quality will not be degraded below the applicable water quality standards set forth, in NAC 445A.11704 to 445A.2234, inclusive.*

Nevada’s Administrative Code (NAC) 445A.11704 to 445A.2234 encompasses the entirety of Nevada’s “Standards for Water Quality.” These standards include Nevada’s beneficial use provisions at NAC 445A.122 Standards applicable to beneficial uses, which provide in relevant part that “The following standards are intended to protect both existing and designated beneficial uses ....” Compared with “existing uses,” as defined at 40 C.F.R. § 131.3(e), federal regulations define “designated uses” as those uses specified in WQS for each water body or segment whether or not they are being attained, 40 C.F.R. § 131.3(f).

EPA finds that Nevada’s Antidegradation Policy, through explicit incorporation of its previously EPA-approved WQS, is consistent with the federal Tier 1 antidegradation requirements at 40 C.F.R. § 131.12(a)(1). Section 11, provision 1 specifies that the department “shall maintain and protect the water quality to meet the applicable water quality standards.” This language, taken in combination with NAC 445A.122 which states that the standards protecting “beneficial uses” include protecting both existing and designated uses, ensures that Nevada’s antidegradation policy is providing that existing uses be maintained and protected, consistent with 40 C.F.R. § 131.12(a)(1).<sup>6</sup>

#### 40 C.F.R. § 131.12(a)(2): Protection of High Quality Waters

40 C.F.R. 131.12(a)(2), or “Tier 2,” addresses waters where the water quality exceeds the levels necessary to support CWA Section 101(a)(2) uses, which include the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water. EPA refers to these waters as “high quality waters.” Nevada’s new Antidegradation Policy at NAC 445A

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<sup>6</sup> NDEP. “Response to comment letters submitted to the Division after the January 25, 2024, workshop for R113-22”. 2024. p. 3. NDEP explained in its [Response to Comments](#) that: “The intent of the antidegradation regulation is to maintain and protect existing uses and high quality/high value waters. The proposed regulation provides consistency across the State with respect to a variety of regulated activities that have the potential to degrade water quality.”

provides a parameter-by-parameter approach to identifying high quality waters for Tier 2 protection. Nevada's new Antidegradation Policy also addresses the requirement at 40 C.F.R. 131.12(a)(2) that a lowering of water quality in Tier 2 waters should only be allowed after public participation by requiring a public hearing before any lowering of water quality (NAC 445A(17)(3)(b)). The policy also addresses the 40 C.F.R. 131.12(a)(2) requirement that a lowering of water quality should only be allowed when necessary to accommodate important economic or social development in the area in which the waters are located (NAC 445A(17)(4)(a)), and that all cost-effective and reasonable best management practices should be achieved for nonpoint source control (NAC 445A(17)(4)(c)(2)).

If a State or authorized Tribe decides to allow a lowering of high water quality, the federal regulation at 40 CFR 131.12(a)(2) also requires the State or authorized Tribe to "assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources." This requirement means that states and authorized Tribes must not allow new or expanded point sources to contribute additional pollution that could result in degradation of high quality waters to waters with existing point source control compliance problems until those compliance issues are remedied, or the discharger provides the State or authorized Tribe an assurance that the compliance issues will be remedied (e.g., enforcement schedule of compliance).

Nevada's Antidegradation Policy at Section 17(4)(c) provides in relevant part:

*4. Following a hearing held pursuant to subsection 3, the Commission may approve the issuance of a permit by the Department that will result in the degradation of the baseline water quality . . . for a parameter of concern in the receiving water that has been designated as having a tier 2 level of antidegradation protection if the Commission determines that:*

*. . .*

*(c) The discharge is consistent with, the requirements set forth, in this chapter and chapter 445A of NRS . . .*

Nevada's Antidegradation Policy at Section 17(4)(c) include incorporates the entirety of its permitting program, including enforcement, where it says that the Commission may only approve a lowering of water quality if the discharge is consistent with Chapter 445A of the NRS, without limitation. Nevada Revised Statutes Chapter 445A is broad and includes *445A.525 Effluent Limitations: Establishment; Enforcement* ("Effluent limitations shall be established and enforced for point sources, including publicly owned treatment works, which require the application of the best practicable control economically achievable") and *445A.530 Effluent Limitations: Additional Limitations* ("If more stringent limitations are needed, including those necessary to meet water quality standards, treatment standards or schedules of compliance established pursuant to the laws of this State or any other federal law or regulation, or are required to implement any applicable water quality standard established by the Commission pursuant to NRS 445A.300 to 445A.730, inclusive, such limitations shall be established and enforced.").

EPA finds these provisions in Nevada’s antidegradation requirements through incorporation by reference of NRS Chapter 445A to be consistent with the EPA requirement that Nevada assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources.

40 C.F.R. § 131.12(a)(2)(ii) requires that before allowing a proposed activity to degrade the water quality of Tier 2 waters, a state or authorized Tribe must make a finding that the lowering is “necessary to accommodate important economic or social development in the area in which the waters are located.” When the analysis of alternatives identifies one or more practicable alternatives, the state “shall only find that a lowering is necessary if one such alternative is selected for implementation.” To determine if the lowering of water quality is “necessary,” the federal regulations require examination of alternatives to the proposed degradation through development of an “analysis of alternatives.” The analysis identifies a range of practicable alternatives, and 40 C.F.R. § 131.3(n) defines “practicable” as “technologically possible, able to be put into practice, and economically viable.” The entity that selects the alternative may choose from the range of practicable alternatives identified in the analysis; the federal regulation does not require the entity to select the least degrading alternative. States or authorized Tribes, however, may choose to specify in their policies that the least degrading alternative must be selected.

Nevada’s new Antidegradation Policy at NAC 445A(17) specifies that an analysis of alternatives must be completed when a proposed new or expanded discharge would lower water quality. While the Nevada Antidegradation Policy does not explicitly state that an alternative from the “analysis of alternatives” must be implemented if a degradation is allowed, the regulatory framework of the Nevada Policy by operation of law ensures that an alternative from the analysis of alternatives is effectively implemented.

Specifically, Section 17(1)(a) of the Nevada Policy requires that the analysis of alternatives, among other requirements, “must include, without limitation . . . the information required in subsection 2 of [Nevada Revised Statute] NRS 445.A565.”<sup>7</sup> This statutory provision requires that the design for a project that will cause a new or increased discharge of pollution from a point source must include “the highest and best degree of waste treatment available under existing technology, consistent with the best practice in the particular field under the conditions applicable, and reasonably consistent with the economic capability of the project or

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<sup>7</sup> NRS 445.A565 *Protection of surface waters of higher quality; treatment of and control over discharges constituting new or increased sources of pollution*, section (2)(a), provides in relevant part: “Any person who plans to discharge waste from any public or private project or development which would constitute a new or increased source of pollution to waters of the State whose quality is high shall, as part of the initial design of the project or development, provide: (a) If the discharge will be from a point source, the highest and best degree of waste treatment available under the existing technology, consistent with the best practice in the particular field under the conditions applicable, and reasonably consistent with the economic capability of the project or development.” (emphasis added).

development.” Under Section 17(4) of the Nevada Antidegradation Policy, the State Environmental Commission (Commission) has the authority to approve a permit that will cause a degradation of a Tier 2 water, but only if the Commission determines, among other requirements, that the discharge is consistent with NRS chapter 445A, and that “the highest and best degree of waste treatment available under existing technology that is reasonably consistent with the economic capability of the project or development is used to prevent or reduce the degradation of the water quality of the receiving water.” Accordingly, if the Commission authorizes a degradation under Section 17(4) of the Nevada Policy, the alternative it selects must meet the same statutory standard as the standard required for analysis of alternatives set out at Section 17(1)(a) (i.e., “the highest and best degree of waste treatment available under the existing technology, consistent with the best practice in the particular field under the conditions applicable, and reasonably consistent with the economic capability of the project or development.”).

The Nevada Policy, by requiring the same standard for both the analysis of alternatives and the alternative approved by the Commission, ensures that if the Commission finds that a lowering of water quality is necessary, an alternative from the analysis of alternatives is effectively implemented. EPA finds this provision is consistent with the federal provision at 40 C.F.R. § 131.12(a)(2)(ii).

Nevada’s Antidegradation Policy is consistent with federal requirement (40 CFR 131.12(a)(2)(ii)) regarding the selection of an alternative for implementation from the analysis of alternatives. The federal provision requires that the analysis evaluate alternatives that prevent or lessen degradation. Under the Nevada Policy, if the analysis finds an alternative that prevents degradation (not just lessens it), the inquiry stops there and that alternative must be selected (i.e., “If the analysis of alternatives does not identify a technologically feasible and economically achievable alternative that would not result in the degradation” then the applicant must get approval from the Commission to allow a degradation). In evaluating this provision in combination with the provisions described in the paragraph above, EPA finds that Nevada’s Antidegradation Policy is consistent with EPA’s regulations because, as implemented, it requires selection of an alternative from the analysis of alternatives that prevents or lessens degradation.

#### 40 C.F.R. § 131.12(a)(3): Protection of Outstanding National Resource Waters

Nevada’s revisions to NAC 445(A)(14)(1)(a) establish Tier 3 antidegradation protection in accordance with 40 C.F.R. § 131.12(a)(3), which requires that 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.

Nevada’s Tier 3 antidegradation protection (see Enclosure B section 14.1(b)(1) prohibits any new or expanded discharges into a Tier 3 water (except under Section 18.5 for general permits)

and prohibits any new or expanded degrading discharges upstream.<sup>8</sup> In addition, Nevada established Tier 2.5 requirements that do not prohibit direct discharges but does prohibit any new or expanded point source of degrading discharge upstream.<sup>9</sup>

EPA approves Nevada's antidegradation requirements consistent with 40 C.F.R. § 131.12(a)(3).

#### 40 C.F.R. § 131.12(b): Implementation Methods

40 C.F.R. § 131.12(b) requires states to develop methods for implementing their antidegradation policy. Nevada has not yet submitted its final methods and EPA looks forward to working with the Nevada Bureau of Water Quality Planning on future development of methods to implement the new Antidegradation Policy. EPA recommends that Nevada's AIMs and/or future revisions to Nevada's antidegradation policy address thermal discharges per 40 C.F.R. § 131.12(a)(4) and the process for ensuring protection of existing uses and Tier 3 protection. EPA also recommends that the AIMs provide additional detail about how the analysis of alternatives will be conducted and how the State will implement the following before allowing a lowering of water quality as part of a Tier 2 review:

- intergovernmental coordination;
- ensure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources;
- that there shall be achieved all cost-effective and reasonable best management practices for nonpoint source control; and
- how the analysis will be conducted to determine whether the social/economic development under consideration is important.

#### **40 C.F.R. § 131.10: Designated Uses**

Nevada revised a definition relating to designated and beneficial uses in NAC 445A.122.21(i) as follows:<sup>10</sup>

~~[Waters of extraordinary]~~ Extraordinary ecological, ~~[or]~~ aesthetic or recreational value. The ~~[unique]~~ important ecological, ~~[or]~~ aesthetic or recreational value of the water must be maintained.

Nevada also revised each of the Beneficial Use tables in NAC 445A.122 Sections 22 – 31 to confirm with the definition change. EPA approves these revisions consistent with 40 C.F.R. § 131.10.

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<sup>8</sup> See Enclosure B. NAC 445A.122 Section 14.1(b)(1)

<sup>9</sup> See Enclosure B. NAC 445A.122 Section 13.1.b(1)

<sup>10</sup> Deletions show in strikeout, additions in underline.



## **B. Revisions that are not WQS**

EPA reviewed revisions to sections 32-38 of Nevada's regulation and determined Nevada made revisions and additions to provisions that are not WQS pursuant to CWA Section 303(c), such as provisions related to permitting. These revisions include editorial and typographical corrections and the addition of conforming language to be consistent with the new antidegradation requirements. EPA acknowledges these changes to Nevada's regulation for clarity.

## **III. Consultation with Indian Tribes**

EPA upholds its trust responsibility to federally recognized tribal governments consistent with the 2023 *EPA Policy on Consultation with Indian Tribes*.<sup>11</sup> Meaningful communication and coordination with appropriate tribal leadership on a government-to-government basis prior to EPA taking actions or making decisions that may affect tribal interests is a fundamental principal of this Policy. On January 27, 2023, and January 30, 2023, EPA sent written offers to consult to the following tribes:

- 1) Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada
- 2) Chemehuevi Indian Tribe of the Chemehuevi Reservation
- 3) Colorado River Indian Tribes of the Colorado River Indian Reservation
- 4) Confederated Tribes of the Goshute Reservation
- 5) Duckwater Shoshone Tribe of the Duckwater Reservation
- 6) Elko Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada
- 7) Ely Shoshone Tribe of Nevada
- 8) Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservations
- 9) Fort Mojave Indian Tribe of Arizona, California and Nevada
- 10) Inter-Tribal Council of Nevada
- 11) Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony
- 12) Lovelock Paiute Tribe of the Lovelock Indian Colony
- 13) Moapa Band of Paiute Indians of the Moapa Indian Reservation
- 14) Paiute-Shoshone Tribe of the Fallon Reservation and Colony
- 15) Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation
- 16) Reno-Sparks Indian Colony
- 17) Shoshone-Paiute Tribes of the Duck Valley Reservation
- 18) South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada
- 19) Summit Lake Paiute Tribe of Nevada
- 20) Te-Moak Tribe of Western Shoshone Indians of Nevada
- 21) Walker Paiute Tribe of the Walker River Reservation
- 22) Washoe Tribe of Nevada & California
- 23) Wells Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada
- 24) Winnemucca Indian Colony of Nevada

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<sup>11</sup> US Environmental Protection Agency. "EPA Policy on Consultation with Indian Tribes." December 7, 2023.

- 25) Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch
- 26) Yomba Shoshone Tribe of the Yomba Reservation

No tribes requested consultation.

#### **IV. Endangered Species Act (ESA) Consultation**

Section 7(a)(2) of the ESA states that each federal agency shall ensure, in consultation with the U.S. Fish and Wildlife Service and/or the U.S. National Marine Fisheries Service (the Services) as appropriate, that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened (listed) species or result in the destruction or adverse modification of critical habitat. For ESA section 7(a)(2) to apply, EPA must be taking an action in which it has sufficient discretionary federal involvement or control to protect listed species.

Consistent with EPA's longstanding determination,<sup>12</sup> if a State or authorized Tribe submits to EPA for review an antidegradation policy that meets the requirements in 40 C.F.R. § 131.12, then EPA is required by the CWA to approve the policy. Because EPA lacks authority to require the State or authorized Tribe to provide more than the minimum elements required in 40 C.F.R. § 131.12, EPA lacks discretion to require inclusion of measures that would benefit listed species. Therefore, consultation with the Services is not required, consistent with the ESA.

#### **V. Conclusion**

EPA finds Nevada's new antidegradation requirements and revision to its beneficial uses consistent with the requirements of the CWA and 40 C.F.R. Part 131, including 40 C.F.R. § 131.12 and 40 C.F.R. § 131.10. These new and revised WQS are approved by EPA pursuant to section 303(c) of the CWA.

#### **VI. References**

Nevada Division of Environmental Protection, "Fact Sheet: Implementing Nevada's Antidegradation Program" R113-22." 2024.

NDEP. "Response to comment letters submitted to the Division after the January 25, 2024, workshop for R113-22" 2024.

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<sup>12</sup> Geoffrey H. Grubbs, U.S. Environmental Protection Agency. "Antidegradation Policy Approvals and Endangered Species Act Consultations". Memorandum to Water Management Division Directors, Regions 1-10, dated January 27, 2005.

State of Nevada, State Environmental Commission, “Approved Regulation of the State Environmental Commission: LCB File No. R113-22, Filed April 19, 2024.” Submitted to U.S. Environmental Protection Agency on July 2, 2024.

Geoffrey H. Grubbs, U.S. Environmental Protection Agency. “Antidegradation Policy Approvals and Endangered Species Act Consultations”. Memorandum to Water Management Division Directors, Regions 1-10, dated January 27, 2005.

US Environmental Protection Agency. “EPA Policy on Consultation with Indian Tribes” December 7, 2023.

US Environmental Protection Agency. “What is a New or Revised Water Quality Standard Under CWA 303(c)(3)?” (EPA Publication No. 820F12017). October 2012.

US Environmental Protection Agency. “Water Quality Standards Regulatory Revisions: A Rule by the Environmental Protection Agency on 8/15/2015,” 80 Federal Register 51020 (2015) (codified in 40 CFR part 131). Energy Efficiency and Conservation Loan Program, 78 Fed. Reg. 73356 (2013) (to be codified at 7 C.F.R. pts. 1710, 1717, 1721, 1724, 1730).

## **Enclosure B**

### **Text of Approved Standards**

The following antidegradation requirements and beneficial use water quality standards (WQS) from sections and subsections of the State of Nevada, State Environmental Commission, "Approved Regulation of the State Environmental Commission: LCB File No. R113-22, Filed April 19, 2024," submitted to EPA on July 2, 2024, are consistent with the requirements of section 303(c) of the Clean Water Act (CWA) and 40 C.F.R. Part 131 and approved and effective immediately.<sup>13, 14</sup>

#### **APPROVED REGULATION OF THE STATE ENVIRONMENTAL COMMISSION LCB File No. R113-22 Filed April 19, 2024**

AUTHORITY: §§ 1, 2 and 20-31, NRS 445A.425 and 445A.520; §§ 3-16, 19, 32, 33 and 36-38, NRS 445A.425 and 445A.465; § 17, NRS 445A.425, 445A.465 and 445A.565; § 18, NRS 445A.425, 445A.465 and 445A.475; § 34, NRS 445A.425, 445A.465 and 445A.500; § 35, NRS 445A.425, 445A.430, 445A.465 and 445A.480.

A REGULATION relating to water pollution; establishing provisions for the designation of certain waters with a beneficial use of "extraordinary ecological, aesthetic or recreational value"; defining certain terms relating to an antidegradation review process for point source discharges into surface waters of this State; establishing provisions for the antidegradation review process; revising provisions relating to standards for water quality; revising various provisions relating to discharge permits, general permits and zones of mixing; and providing other matters properly relating thereto.

**Section 1.** Chapter 445A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this regulation.

#### **Sec. 2.**

1. For the purposes of paragraph, (i) of subsection I of NAC 445A.122, the Commission may designate a surface water or segment of a surface water with the beneficial use of "extraordinary ecological, aesthetic or recreational value" if the Commission determines that the water has one or more of the following attributes:

(a) Water quality that is better than the applicable standards of water quality;

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<sup>13</sup> This enclosure shows the final WQS in effect for CWA purposes. Nevada's submittal shows revisions with additions in blue and deletions in strikeout.

<sup>14</sup> Abbreviations used in this appendix: 1) LCB: Legislative Counsel Bureau 2) NAC: Nevada Administrative Code and 3) NRS: Nevada Revised Statutes

- (b) One or more unique water quality characteristics or attributes; or
- (c) Some other extraordinary ecological, aesthetic or recreational value.

2. The Commission will designate the tier level of antidegradation protection that will be applied to the water for the purposes of sections 3 to 19, inclusive, of this regulation. A water designated as having a beneficial use of "extraordinary ecological, aesthetic or recreational value" must have a designated tier level of antidegradation protection of 2.5 or 3.

3. The designation of a surface water or segment of a surface water with a beneficial use of "extraordinary ecological, aesthetic or recreational value" does not prohibit the use of water authorized under title 48 of NRS.

**Sec. 3.** As used in sections 3 to 19, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.

**Sec. 4.** "Baseline water quality" means the existing water quality for each parameter of concern in the surface water or segment thereof, which has been established by the Department following the collection of not less than 20 samples collected approximately every 90 days over a period of not less than 5 years at a location designated by the Department.

**Sec. 5.** "Effluent-dominated water" means a surface water or segment thereof that consists of greater than 80 percent wastewater effluent/or at least 300 days in a 365-day period.

**Sec. 6.** "Interim baseline value" means the interim estimate of the baseline water quality for each parameter of concern in the surface water or segment thereof, which has been established by the Department following the collection of not less than eight samples collected approximately every 90 days over a period of at least 2 years.

**Sec. 7.** "Parameter of concern" means a parameter with a water quality standard set forth in NAC 445A.11704 to 445A.2234, inclusive, or that has been determined by the Department to be of concern.

**Sec. 8.** "Requirement to maintain existing higher water quality" means a water quality standard established by the Commission for a parameter of concern in a surface water or segment thereof where the baseline water quality has been determined by the Department to be better than the water quality standard set forth in NAC 445A.11704 to 445A.2234, inclusive.

**Sec. 9.** The provisions of sections 3 to 19, inclusive, of this regulation do not apply to any activity which, may result in the temporary or limited degradation of water quality if the Director determines that the activity is necessary:  
To accommodate public health and safety in the area in which the surface water is located; or

2. As all emergency response to mitigate an immediate threat to public health or safety.  
→ Any such activity must not be reoccurring and the Department shall ensure that any controls necessary are implemented to minimize the temporary impacts to water quality.

**Sec. 10.** For the purposes of sections 3 to 19, inclusive, of this regulation:

1. A tier 1 level of antidegradation protection:

(a) Applies when:

(1) The baseline water quality or interim baseline value of a surface water or segment thereof on a parameter-by-parameter basis is determined by the Department to not be better than the applicable water quality standard set forth in NAC 445A.11704 to 445A.2234, inclusive, for that surface water or segment thereof; or

(2) The surface water or segment thereof is an effluent-dominated water; and

(b) Is subject to the provisions of section 14 of this regulation.

2. A tier 2 level of antidegradation protection:

(a) Applies when:

(1) The baseline water quality or interim baseline value of a surface water or segment thereof on a parameter-by-parameter basis is determined by the Department to be better than the applicable water quality standard set forth in NAC 445A.1704 to 445A.2234, inclusive, for that surface water or segment thereof; or

(2) A requirement to maintain existing higher water quality has been established by the Commission; and

(b) Is subject to the provisions of section 12 of this regulation.

3. A tier 2.5 level of antidegradation protection:

(a) Applies when the surface water or segment thereof has been designated by the Commission, pursuant to section 2 of this regulation, as having a beneficial use of "extraordinary ecological, aesthetic or recreational value" and as having a tier 2.5 level of antidegradation protection; and

(b) Is subject to the provisions of section 13 of this regulation.

4. A tier 3 level of antidegradation protection:

(a) Applies when the surface water or segment thereof has been designated by the Commission, pursuant to section 2 of this regulation, as having a beneficial use of "extraordinary ecological, aesthetic or recreational value" and as having a tier 3 level of antidegradation protection; and

(b) Is subject to the provisions of section 14 of this regulation.

**Sec. 11.** If a parameter of concern in a surface water or segment thereof is designated as having a tier 1 level of antidegradation protection, the Department:

1. Shall maintain and protect the water quality to meet the applicable water quality standards set forth in NAC 445A.11704 to 445A.2234, inclusive; and

2. May authorize a new or expanded point source discharge if the Department determines that the water quality will not be degraded below the applicable water quality standards set forth, in NAC 445A.11704 to 445A.2234, inclusive.

**Sec. 12.** If a parameter of concern in a surface water or segment thereof is designated as having a tier 2 level of antidegradation protection, the Department:

1. Shall, except as otherwise provided in subsection 2, maintain and protect the baseline water quality or interim baseline value, as applicable, or any requirement to maintain existing higher water quality; and

2. May authorize a new or expanded point source discharge that will degrade the baseline water quality or interim baseline value, as applicable, or any requirement to maintain the existing higher water quality if the discharge is approved by the Commission pursuant to section 17 of this regulation.

**Sec. 13.** If a surface water or segment thereof is designated by the Commission, pursuant to section 2 of this regulation, as having a tier 2.5 level of antidegradation protection, the Department:

1. Shall:

(a) Maintain and protect the baseline water quality or any requirement to maintain existing higher water quality.

(b) Prohibit:

(1) Any new or expanded point source discharge into or upstream of the designated water if the Department determines the discharge will degrade the baseline water quality or any requirement to maintain existing higher water quality or have a detrimental impact on an attribute of the designated water; and

(2) Any new or expanded zone of mixing within the designated water; and

2. Shall not:

(a) Prohibit a point source discharge that was authorized by the Department before the surface water or segment was designated as having a tier 2.5 level of antidegradation protection if the request to renew or modify the permit to discharge will not expand the point source discharge or alter the zone of mixing;

(b) Deny an application for a storm water runoff permit or an application to modify or renew an existing storm water runoff permit if the Department determines that the applicant has demonstrated that the baseline water quality or any requirement to maintain existing higher water quality will be maintained and protected; or

(c) Prohibit an activity authorized by the Department to restore, maintain or improve the water quality of the designated water.

**Sec. 14.** If a surface water or segment thereof is designated by the Commission, pursuant to section 2 of this regulation, as having a tier 3 level of antidegradation protection, the Department:

1. Shall:

- (a) Maintain and protect the baseline water quality or any requirement to maintain existing higher water quality;
- (b) Except as otherwise provided in subsection 5 of section 18 of this regulation, prohibit:
  - (1) Any new or expanded point source discharge into the designated water;
  - (2) Any new or expanded point source discharge that occurs upstream of the designated water if the Department determines that the discharge will degrade the baseline water quality or any requirement to maintain existing higher water quality or have a detrimental impact on the designated water; and
  - (3) Any new or expanded zone of mixing within the designated water; and

2. Shall not:

- (a) Prohibit a point source discharge that was authorized by the Department before the surface water or segment thereof was designated as having a tier 3 level of antidegradation protection if the request to renew or modify the permit to discharge will not result in an expanded point source discharge or alter a zone of mixing associated with the point source discharge;
- (b) Deny an application for a storm water runoff permit or an application to modify or renew an existing storm water runoff or the Department determines that the applicant has demonstrated that the baseline water quality or any requirement to maintain the existing higher water quality will be maintained and protected; or
- (c) Prohibit an activity authorized by the Department to restore, maintain or improve the water quality of the designated water.

**Sec. 15.** The Department shall conduct an antidegradation review to ensure the antidegradation requirements of sections 3 to 19, inclusive, of this regulation are met if a person submits an application for a permit pursuant to NAC 445A.230 for:

1. A new point source discharge;

2. The renewal or modification of a permit that will result in an expanded point source discharge, which includes, without limitation, a proposed:

- (a) Increase of the maximum flow of the discharge;
- (b) Increase in the concentration of any parameter of concern in the discharge;
- (c) Increase in the load of any parameter of concern to the receiving water;
- (d) Change in the composition of the discharge which would require different effluent limitations; or
- (e) Relocation of the discharge; or

3. A new or altered zone of mixing.



## **Sec. 16.**

1. An antidegradation review required pursuant to section 15 of this regulation must:

- (a) Be conducted by the Department/or each parameter of concern that is expected to be present in the point source discharge; and
- (b) Evaluate the potential impacts of a point source discharge to the baseline water quality, interim baseline value or requirement to maintain existing higher water quality, as applicable, for each parameter of concern in the receiving water.

2. For the purpose of the evaluation conducted pursuant to subsection 1:

- (a) Except as otherwise provided in paragraph, (b), the Department shall use the baseline water quality or, if established, the requirement to maintain existing higher water quality, to determine the appropriate level of antidegradation protection for each parameter of concern in the receiving water;
- (b) If, on the date the permit application is submitted, there is insufficient data to establish the baseline water quality for each parameter of concern in the receiving water, the Director:
  - (1) Shall require the applicant to submit a sampling and analysis plan pursuant to subsection 4 to determine the baseline water quality; and
  - (2) May establish an interim baseline value pursuant to subsection 5 for the purposes of issuing the permit; and
- (c) If the water quality for each parameter of concern in the point source discharge is:
  - (1) The same or better than the baseline water quality, interim baseline value or requirement to maintain existing higher water quality, as applicable, required/or a tier 2 level of antidegradation designation, the Department shall not require any additional analysis to authorize the point source discharge; or
  - (2) Worse than the baseline water quality, interim baseline value or requirement to maintain existing higher water quality, as applicable, required/or a tier 2 level of antidegradation protection designation, the applicant must submit to the Department an analysis of alternatives and, if no feasible alternative is identified, a justification pursuant to section 17 of this regulation.

3. In addition to the requirements of subsection 1, if an applicant proposes a point source discharge to a surface water or segment thereof that has been designated by the Commission as a tier 2.5 level of antidegradation protection or upstream of a surface water or segment thereof that has been designated as a tier 2.5 or tier 3 level of antidegradation protection, the antidegradation review must, without limitation, demonstrate that the designated beneficial use of "extraordinary ecological, aesthetic or recreational value" will be maintained and protected.

4. A sampling and analysis plan submitted by an applicant pursuant to subsection 2 must, without limitation:

- (a) Specify the location and protocols that will be used by the applicant for the sampling and laboratory analysis of at least 20 seasonally representative samples collected approximately

every 90 days over a period of at least 5 years to establish the baseline water quality of a surface water or segment thereof; and

(b) Be submitted to the Department for approval no later than 90 days before the applicant proposes to begin conducting sampling activities.

5. The Director may establish an interim baseline value for the purposes of issuing a permit based on the results of eight seasonally representative samples collected by the applicant in accordance with a sampling and analysis plan that has been approved by the Department pursuant to subsection 4. An interim baseline value established pursuant to this section is valid until the earlier of:

(a) One year after the last day of the timeframe required to establish the baseline water quality pursuant to an approved sampling and analysis plan; or

(b) The date on which the Commission establishes a requirement to maintain existing higher water quality for the surface water or segment thereof.

## **Sec. 17.**

1. If the antidegradation review conducted by the Department pursuant to sections 15 and 16 of this regulation determines that the discharge for which an application is submitted will degrade the baseline water quality, interim baseline value or requirement to maintain existing higher water quality, as applicable, for a parameter of concern in the receiving water that has been designated as having a tier 2 level of antidegradation protection, the Department shall, for the purposes of NRS 445A.565, require the applicant to submit to the Department for review by the Commission an analysis of alternatives which must include, without limitation:

(a) The information required in subsection 2 of NRS 445A.565;

(b) Alternative treatment technologies;

(c) Alternative discharge locations;

(d) Alternative processes that would improve discharge quality;

(e) Seasonal or controlled discharge; and

(f) An alternative that does not result in the discharge.

2. If an applicant is required to conduct an analysis of alternatives as a requirement of other permitting activities or environmental reviews and the analysis of alternatives meets the requirements of subsection 1, the same analysis of alternatives may be submitted for the purposes of subsection 1.

3. If the analysis of alternatives does not identify a technologically feasible and economically achievable alternative that would not result in the degradation of the baseline water quality, interim baseline value or requirement to maintain existing higher water quality, as applicable, for a parameter of concern in the receiving water:

(a) The applicant must submit to the Department, for approval by the Commission, a justification based on the economic or social importance of the proposed discharge that demonstrates why the degradation of the water quality for the parameter of concern is necessary; and

(b) For the purposes of NRS 445A.565, the Commission will hold a public hearing on an application subject to the provisions of this section.

4. Following a hearing held pursuant to subsection 3, the Commission may approve the issuance of a permit by the Department that will result in the degradation of the baseline water quality, interim baseline value or requirement to maintain existing higher water quality, as applicable, for a parameter of concern in the receiving water that has been designated as having a tier 2 level of antidegradation protection if the Commission determines that:

(a) The degraded water quality for the parameter of concern is justifiable because of economic or social considerations;

(b) The discharge will not result in the parameter of concern in the receiving water failing to meet the applicable water quality standards set forth in NAC 445A.11704 to 445A.2234, inclusive; and

(c) The discharge is consistent with, the requirements set forth, in this chapter and chapter 445A of NRS, including, without limitation, that:

(1) The highest and best degree of waste treatment available under existing technology that is reasonably consistent with, the economic capability of the project or development is used to prevent or reduce the degradation of the water quality of the receiving water; and

(2) All cost-effective and reasonable best management practices for diffuse source pollution control required by this chapter and chapter 445A of NRS are achieved to prevent or reduce the degradation of the water quality of the receiving water.

5. If the Commission approves the issuance of a permit that will result in the degradation of the baseline water quality, interim baseline value or requirement to maintain existing higher water quality, as applicable, for a parameter of concern pursuant to this section, the Department shall ensure that the effluent limitation established in the discharge permit for the parameter of concern pursuant to NAC 445A.243 is not less protective than the applicable water quality standards for the receiving water.

## **Sec. 18.**

1. In accordance with section 16 of this regulation, the Department shall conduct an antidegradation review before issuing a general permit to evaluate the potential impact of a discharge on the baseline water quality, interim baseline value or requirement to maintain existing higher water quality, as applicable, for the parameters of concern in the receiving water if:

(a) A group of dischargers submit an application for a general permit pursuant to NAC445A.268; or

(b) A general permit is issued without application pursuant to NAC 445A.268.

2. Based on the antidegradation review conducted pursuant to subsection 1, the Department shall incorporate any conditions and requirements deemed necessary by the Director to ensure that the group of dischargers minimizes any degradation of the water quality and complies with antidegradation requirements.

3. Except as otherwise provided in subsections 4 and 5, if a discharger submits a notice of intent to engage in an activity for which a general permit has been issued, the Director shall presume that the discharger will comply with all the conditions and requirements imposed pursuant to subsection 2 and that antidegradation requirements will be met.

4. Upon the renewal of a general permit, the Director may modify the terms or conditions of the general permit to minimize the degradation of the water quality of the receiving water resulting from a group of dischargers.

5. If an application or notice of intent indicates that a group of dischargers or a specific discharger will be discharging into a receiving water that has been designated by the Commission as having a tier 2.5 or tier 3 level of antidegradation protection, the Director shall require the applicant to demonstrate that the baseline water quality or any requirement to maintain existing higher water quality will be maintained and protected and, if successfully demonstrated, the Director may:

- (a) Approve the application or notice of intent, as applicable;
- (b) Issue the general permit or approve the notice of intent; or
- (c) Require the group or specific discharger to apply for an individual permit pursuant to NRS 445A.480.

**Sec. 19.** If a person submits an application for a storm water runoff permit or a modification to a storm water runoff permit pursuant to NAC 445A.230 or 445A.263, the Director shall presume for the purposes of the antidegradation review that the applicant will comply with all the permit conditions and any requirements imposed pursuant to this chapter, including, without limitation, the development of a storm water management plan with best practices, as defined in NAC 445A.306, to prevent, eliminate or reduce the pollutants in storm water discharges and meet all antidegradation requirements.

**Sec. 20.** NAC 445A.070 is hereby amended to read as follows:

445A.070 As used in NAC 445A.070 to 445A.348, inclusive, and sections 3 to 19, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NAC 445A.071 to 445A.116, inclusive, have the meanings ascribed to them in those sections.

**Sec. 21.** NAC 445A.122 is hereby amended to read as follows:

445A.122

1. The following standards are intended to protect both existing and designated beneficial uses and must not be used to prohibit the use of the water as authorized under title 48 of NRS:

- (a) Watering of livestock. The water must be suitable for the watering of livestock without treatment.
- (b) Irrigation. The water must be suitable for irrigation without treatment.

- (c) Aquatic life. The water must be suitable as a habitat for fish and other aquatic life existing in a body of water. This does not preclude the reestablishment of other fish or aquatic life.
- (d) Recreation involving contact with the water. There must be no evidence of man-made pollution, floating debris, sludge accumulation or similar pollutants.
- (e) Recreation not involving contact with the water. The water must be free from:
  - (1) Visible floating, suspended or settled solids arising from human activities;
  - (2) Sludge banks;
  - (3) Slime infestation;
  - (4) Heavy growth of attached plants, blooms or high concentrations of plankton, discoloration or excessive acidity or alkalinity that leads to corrosion of boats and docks;
  - (5) Surfactants that foam when the water is agitated or aerated; and
  - (6) Excessive water temperatures.
- (f) Municipal or domestic supply. The water must be capable of being treated by conventional methods of water treatment in order to comply with Nevada's drinking water standards.
- (g) Industrial supply. The water must be treatable to provide a quality of water which is suitable for the intended use.
- (h) Propagation of wildlife. The water must be suitable for the propagation of wildlife and waterfowl without treatment.
- (i) Extraordinary ecological, aesthetic or recreational value. The important ecological, aesthetic or recreational value of the water must be maintained.
- (j) Enhancement of water quality. The water must support natural enhancement or improvement of water quality in any water which is downstream.
- (k) Maintenance of a freshwater marsh. The water must be suitable for the maintenance of a freshwater marsh.

2. This section does not entitle an appropriator to require that the source meet his or her particular requirements for water quality.

### **Section 22 through Section 31**

All designated beneficial uses tables in these sections are updated to include a new description for the Aesthetic Use, as follows:

Aesthetic: Extraordinary ecological, aesthetic or recreational value