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Dave Simpson
Nevada Division of Environmental Protection
Bureau of Water Quality Planning
901 S. Stewart Street
Carson City, Nevada 89701
dsimpson@ndep.nv.gov

April 22, 2022

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 proposed regulations for Extraordinary Ecological, Aesthetic, or Recreational Waters (EAWs) and Antidegradation policy and review procedures (R119-20). Protecting the quality of our waters, especially in a climate changing world, is an imperative for both people and nature.

Pew's U.S. public lands and rivers conservation project seeks to conserve biodiversity by protecting and restoring ecologically and culturally significant U.S. lands and rivers. To achieve this landscape level conservation, Pew works collaboratively with policy makers, Indigenous communities, local businesses, scientists, hunters, anglers, and others to implement federal and state laws or agency actions that safeguard landscapes and sustain local communities.

Rivers and wetlands in the United States provide myriad benefits to humans, also known as ecosystem services, including climate regulation, drinking water, food supply, recreation, and cultural and scientific opportunities that support biodiversity, human health, and local communities. Despite these benefits, very few of the 3.5 million miles of rivers in the United States and 141,000 miles of rivers in Nevada have protective designations.

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. But those landscapes are in jeopardy if the lakes, rivers, and streams that feed them are not also protected.

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 safeguarding vital recreational opportunities, habitat for critical species such as the threatened Lahontan Cutthroat trout, migrating wildlife, and the limited freshwater resources that feed the Great Basin and Mojave deserts.



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Below please find both overarching, general comments as well as specific comments on the proposed regulations for Extraordinary Ecological, Aesthetic, or Recreational Waters (EAWs) and Antidegradation policies. We appreciate all the time and consideration that has gone into drafting these policies and look forward to continuing to work with the Nevada Division of Environmental Protection and the Bureau of Water Quality Planning to implement this policy and designate deserving waters as EAWs.

General Comments

Nevada's freshwaters supply drinking water to residents across the state, sustain wildlife habitat, and provide an economic boost to local communities. However, few of the state's rivers, lakes, and creeks have substantive protections. We applaud the Nevada Division of Environmental Protection (Division) for your work in drafting a policy to safeguard some of the state's most outstanding waters as Extraordinary, Ecological, Aesthetic, or Recreational Waters (EAW). This policy along with the antidegradation policy and implementation procedures will help safeguard stretches of rivers or other water bodies with high water quality or other important characteristics, including exceptional ecological, recreational, historic, or habitat values. Once protected, EAWs will have the highest level of protection for freshwater under the Clean Water Act.

Nevada's waters are under increasing threat as the climate warms and the population grows, placing greater stress and demand on freshwater resources. Including a streamlined process for EAW designation as part of the state's updated anti-degradation program will facilitate meaningful protections for the state's most outstanding waters and prevent degradation of stretches of rivers, streams, wetlands and other water bodies with high water quality or other unique characteristics.

In our previous comments on the EAW and Antidegradation policies dated October 29th, 2021, Pew outlined several minor changes to the then draft policy that would have provided greater clarity to how the policy would be implemented. Those included requesting greater clarity on water quality standards needed to meet EAW criteria, eliminating the "ability to manage" as a criterion for EAWs, supporting public participation and commenting as part of the EAW nomination process while urging that the EAW criteria take precedence in the designation and classification of these waters and finally, supporting the recommendation that Lake Tahoe be protected as an EAW with Tier 3 protection.

We appreciate the Division incorporating some of our recommendations into its draft EAW policy issued on February 23rd. However, we urge the State to reconsider its decision to eliminate the EAW designation for Lake Tahoe and to include Tier 3 EAW protections for Lake Tahoe into the final policy.



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Lake Tahoe is home to iconic wildlife and fish such as black bear, Lahontan cutthroat trout, and Kokanee salmon, provides clean drinking water to over half a million people in Nevada and California, and offers numerous recreational opportunities which fuel the local economy. A Tier 3 designation will ensure Lake Tahoe has the level of protection needed to safeguard the water quality, clarity, wildlife habitat, and recreational opportunities of the largest freshwater lake in the Sierra Nevada. Nevada's Tier 3 EAW protection for Lake Tahoe will also mirror the designation provided by the State of California, ensuring more coordinated management across 122,000 acres of the lake.

Pew also appreciates the changes the Division made in draft policy R119-20 to streamline and clarify the policy. However, we believe several provisions in the proposed regulation set an almost insurmountable bar for a member of the public to nominate a waterbody for EAW status and are inconsistent with the Clean Water Act and federal antidegradation requirements. Rather than focusing on water quality or ecological or recreational significance, several subsections of the proposed rule require analysis and data collection aimed at factors well outside the scope of what should qualify a water for EAW status. We provide more detailed feedback in our specific comments below.

Pew stands ready to work with the agency to ensure this policy is finalized and implemented in the coming months.

Specific Comments

Below please find section specific comments on both the proposed Ecological or Aesthetic Waters policy and the draft Antidegradation Implementation Procedures.

Proposed Regulation of the State Environmental Commission R119-20 Agency Draft Version dated February 23, 2022

Section 2 of this regulation sets forth a process for the Commission to classify a water of this State or segment thereof as a water of extraordinary ecological, aesthetic or recreational value and authorizes a person to petition the Commission to make such a classification or submit a nomination to the State Department of Conservation and Natural Resources. Section 2 also requires the Commission to designate a tier of antidegradation protection for the classified water, which must be either tier 3 or tier 2.5.

Section 2 sets forth several requirements for an EAW nomination that Pew recommends be deleted or modified because they either place an undue burden on someone who is nominating a waterbody for protection or are not relevant to the determination of whether a waterbody should be protected as an EAW.



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In Section 2.3(a)(5), regarding the nomination of an EAW, the requirements for a watershed inventory are beyond the scope of what is contemplated in the Clean Water Act and serves as an unnecessary burden which could discourage members of the public from seeking to protect Nevada's most outstanding waters. As such, Pew recommends deleting this subsection.

Section 2.3(a)(6) requires that an EAW nomination include a statement detailing the compatibility of the classification with any preexisting or preauthorized land use activities on lands adjacent to the surface water or segment thereof. Pew suggests deleting this subsection. If a waterbody qualifies as an EAW given the current land use activities, then presumably the existing activities are compatible with the designation and should not adversely impact the water quality. Conversely, the EAW designation should not have any impact on existing land use activities.

Section 2.3(a)(8) requires that a nomination include, "Evidence of any public outreach and communication efforts within the local community near the surface water or segment thereof conducted by the person submitting the nomination, which may include, without limitation, letters or statements from stakeholders, landowners or federal, state or local government agencies;" As stated earlier, Pew supports robust public participation and comment opportunities during the EAW nomination process, however we urge the Division to clarify that EAW criteria set forth in Section 2.1 govern the designation and classification of these waters. Pew recommends the following edits to this section.

Evidence of any public outreach and communication efforts. ~~within the local community near the surface water or segment thereof conducted by the person submitting the nomination, which may include, without limitation, letters or statements from stakeholders, landowners or federal, state or local government agencies~~

Section 2.3(a)(9) also requires that a nomination include "Any other information or data required by the Commission to support the classification". We believe this language fails to provide adequate guidance and is too vague, potentially resulting in the requirement that a nomination include data which could be beyond the scope of this regulation and could make the burden of proof for a nomination insurmountable for a member of public to nominate a body of water for EAW status. Pew recommends deleting this section.

Sections 3-11 of this regulation set forth an antidegradation review process for discharges into surface waters of this State to protect the water quality of surface waters of this State and maintain higher water quality in those waters which currently have higher water quality than is required by existing water quality standards.

Pew appreciates the changes made to the antidegradation policy to streamline and clarify the procedures. This updated version of the policy gives more straightforward guidance for



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antidegradation review, and we have limited recommendations for language changes in this section.

Section 9 outlines the requirements if an antidegradation review determines that an application to discharge will result in the degradation of water quality for a parameter of concern in the receiving water that has been designated as having Tier 2 level of antidegradation. In order to ensure protection of Tier 2 waterways, Pew recommends that the language in Section 9(b) be changed from “May consider” to “Must consider”. As an alternative the language in section 9(b) could be changed to “Should consider if more information is deemed necessary.”

Section 10.6 outlines several circumstances in which the Department shall not conduct an antidegradation review even if the Director determines that an activity may result in the temporary or limited lowering quality. Sections 10.6 (a) and (b) are directly linked to public health and safety, however Section 10.6(c) is overly broad, allowing the Department to forego an antidegradation review for any other purpose deemed permissible and necessary. Pew does not support such an unbounded provision that has the potential to undermine an EAW designation and therefore, recommends deleting Section 10.6(c). The Department should expressly define the situations pursuant to which a temporary lowering of water quality is allowed.

Thank you for the opportunity to comment. We appreciate the time, effort, and dedication it took to craft such a comprehensive and balanced policy. We feel the State’s draft policy along with Pew’s limited and important suggested changes to the regulations will result in a strong framework to protect some of Nevada’s most high value waters and allow for a comprehensive approach to water quality management. We look forward to future opportunities to collaborate with the Division of Environmental Protection and the Bureau of Water Quality Planning. If you have any questions, or need further information, please contact me at csandstedt@pewtrusts.org or (775) 342-7367.

Sincerely,

Carrie Sandstedt

Carrie Sandstedt
Senior Manager
U.S. Public Lands and Rivers Conservation
The Pew Charitable Trusts