

RECEIVED

DEC 15 2022



SUMMIT LAKE PAIUTE TRIBE

Primary Administrative Office

2255 Green Vista Dr. Suite 402 - Sparks, NV 89431-7599

(775) 827-9670 • (775) 827-9678 (Fax)

ENVIRONMENTAL PROTECTION

SUMMIT LAKE PAIUTE COUNCIL

Chairperson: Randi Lone Eagle • Vice-Chairperson: Nedra Crane

Secretary/Treasurer: Eugene Mace Sr. • Council Member: Philip Frank • Council Member: Steven Crane

December 12, 2022

Submitted electronically via email

Dave Simpson, Supervisor
Bureau of Water Quality Planning
901 S. Stewart Street, Suite 4001
Carson City, NV 89701
Dsimpson@ndep.nv.gov

Dear Mr. Simpson:

The Summit Lake Paiute Tribe (Tribe) encourages the Nevada Division of Environmental Protection (NDEP) to promulgate Ecological and Aesthetic Water (EAW) rules. We anticipate using this tool to protect Mahogany Creek (stretch outside the Reservation) from possible future degradation. Mahogany Creek is unique in Nevada because it supports the only native, self-sustaining lacustrine life history of Lahontan cutthroat trout – Nevada's state fish and listed as threatened on the US endangered species list. And, and most importantly, the Tribe protects these fish because they are a cornerstone of our culture.

The Tribe has been following the evolution of the EAW rules. In the spirit of collaboration and partnership, we respectfully offer our perspective as potentially the first nominator. The Tribe understands that the rules must achieve multiple goals, namely, to protect special waters, encourage public participation, but limit the disingenuous utilization of State (NDEP/SEC) resources. We propose these goals can be maximized (or minimized) by adopting a robust yet flexible approach that leverages best practices from neighboring states.

The principal areas for improvement are the requirements for water chemistry data and a watershed assessment. First, the requirements are approximately double the number in the New Mexico, Arizona, or Colorado rules. In addition, each requirement could take considerable time and expense to complete (especially for those waters that don't have existing water quality data) and may require expertise from multiple disciplines, such as biology/ecology, environmental science, hydrology, economics, sociology, to name a few.

Thus, the requirements may form a formidable obstacle for 'any person'. 'Any person' connotes the idea that a person from any socio-economic background should be successful in this process. However, the time, expense, and expertise implied in these requirements will likely prevent most Nevadans from participating or being successful. Thus, the requirements are not as egalitarian in practice as 'any person' implies. We also consider clubs, groups, or organizations as 'any person'.

Furthermore, the requirements create a lot of uncertainty for participation. Nothing in the rules indicates any probability of success. Although it is understandable that success cannot be guaranteed or be given an exact probability, not knowing if all the above work will have a reasonable chance to result in a favorable outcome may be a significant barrier for 'any person'.

For the above reasons, our Natural Resources Department (albeit small) would be significantly challenged to complete the current EAW application, and with no real confidence of success, even though Mahogany Creek has favorable attributes (state fish, ESA threatened species, BLM Instant Study Wilderness Area, cultural importance, etc.) under the rules of other states.

To have a robust yet flexible framework, we propose rules that reduce or eliminate the requirement for water quality data, consider state and federal species of concern and protected or wilderness areas, eliminate discussions of past and future uses/impacts, and provide 'or' instead of 'and' criteria so that applicants do not have the burden to meet all requirements. Therefore, we suggest leveraging primarily the rules from New Mexico, of which many are found in Colorado and Arizona, too. We encourage the EAW rules to look more like this:

A. Procedures for nominating an EAW [Ecological and Aesthetic Water]: Any person may nominate a surface water of the state for designation as an EAW by filing a petition with the Commission. A petition to designate a surface water of the state as an EAW shall include:

1. A map of the surface water of the state, including the location and proposed upstream and downstream boundaries;
2. A written statement and evidence based on scientific principles in support of the nomination, including specific reference to **one or more** of the applicable EAW criteria listed in Subsection B of this section;
3. Water quality data including chemical, physical or biological parameters, **if available**, to establish a baseline condition for the proposed EAW;
4. A discussion of activities that might contribute to the reduction of water quality in the proposed EAW;

B. Criteria for EAWs: A surface water of the state, or a portion of a surface water of the state, may be designated as an EAW where the Commission determines that the designation is beneficial to the state of Nevada, and:

1. The water is a significant attribute of a state special trout water, national or state park, national or state monument, national or state wildlife refuge or designated wilderness area, or is part of a designated wild river under the federal Wild and Scenic Rivers Act; **or**
2. An endangered or threatened species is associated with the surface water and the existing water quality is essential to the species' maintenance and propagation **or** the surface water provides critical habitat for the threatened or endangered species. **(Arizona)**
3. The water has exceptional recreational or ecological significance; **or**
4. The existing water quality is equal to or better than the numeric criteria for protection of aquatic life and contact uses and the human health-organism only criteria, and the water has not been significantly modified by human activities in a manner that substantially detracts from its value as a natural resource.

Lastly, the suggestion that was provided in the last workshop for NDEP to include a guidance document for petitioners with sources and links to find information and general guidance on submitting a successful petition is appreciated.

The Summit Lake Tribe hopes for regulations that can help us achieve the goal that the process was set up for and thank you for the opportunity to help form this process. We ask that NDEP and the State Environmental Commission work toward finalizing this rule that we be full partners in crafting the language. We are committed to working with stakeholders and NDEP to see that an EAW policy gets created that is manageable for nominators, focused on the water, while ensuring all stakeholders have a voice.

Respectfully,

A handwritten signature in blue ink, appearing to read "Lone Eagle", written over the printed name.

Chairwoman Lone Eagle

