

No.	Stakeholder Entity	EAW / Antideg	Comment - Concern	Division Response
1	NV Farm Bureau Federation	EAW	The proposed rule does not include adequate requirements for the information on the nomination to include existing land uses descriptions for the area adjacent to the nominated surface water or the segment of a surface water.	Language has been included in the proposed rule to include pre-existing and pre-authorized land use activities on lands adjacent to the surface water or segment thereof be included in the evaluation of a nominated EAW.
2	NV Farm Bureau Federation	EAW	As currently written, the proposed rule does requires that an EAW classification be compatible with any preexisting or preauthorized land use activities. Included in this compatability discussion are "historic irrigation practices and agricultural activities in the watershed." There should also be specific inclusion of "livestock grazing". The proposed rule should also require that such land uses be identified if any or all are adjacent to the nominated surface water or the segment of the surface water. The following language is suggested to be included in the proposed regulation: <i>"any land use which could be impacted by a designation of an EAW should result with the proposal for an EAW designation to be disqualified as being incompatible."</i>	As suggested, "livestock grazing" has been included in the compatability evaluation of the nominated surface water or the segment of the surface water. The current language in the proposed rule implies that if preexisting and preauthorized land uses would be impacted by an EAW designation, this would be grounds for denying the nomination.
3	NV Farm Bureau Federation	EAW	The proposed rule contains two processes for nominating an EAW - a person can work with the Division or go directly to the Commission. The rule needs to be clear that the specified information for the support of the nomination is equivalent whether a person is working with the Department or going directly to the Commission.	The proposed rule has been revised to contain only one process - submittal of nomination to the Commission with information and data to support the nomination.
4	NV Farm Bureau Federation	EAW	The proposed rule contains a list of activities that shall not be impacted by an EAW designation. Existing land uses is not included in this list and needs to be recognized. The following is suggested to be added to the rule: <i>"An EAW classification does not allow for restrictions or changes to existing land uses adjacent to the proposed designation or impact private property rights or land use permits associated with the federally-managed lands that are adjacent to the surface water or segment of a surface water."</i>	The Division has included language, as suggested, stating that an EAW classification does not <i>"restrict or change existing land uses, including historical irrigation practices, other agricultural and grazing activities adjacent to the proposed EAW, or adversely affect private property rights or existing land-use permits associated with any federally managed lands that are adjacent to the proposed EAW."</i>

5	NVMA	Proposed Reg	<p>The need for the proposed regulations pertaining to antidegradation review is unclear. Despite extensive discussions with Division staff, it is still unclear as to the purpose of the proposed regulations and, more importantly, the value they provide over the current requirements in terms of the protection of water quality, the simplification of analysis, or more timely permitting.</p>	<p>The intent of the proposed rule is to provide a transparent process that the Division will follow to evaluate the impact(s) of a point source discharge to water quality conditions in a receiving water. Revisions that have been made to the proposed rule include (1) incorporating the existing RMHQ program as the means to provide Tier 2 antidegradation protection levels when necessary, (2) defining what would be considered a higher water quality condition for individual water quality parameters, and (3) describing the requirements for water chemistry data for developing an RMHQ.</p>
6	NVMA	Proposed Reg	<p>Why is this regulation needed? (Part 2)</p>	<p>The proposed rule will provide a process to protect higher water quality condition when warranted. The current approach to antidegradation protection is poorly documented. At present, NAC 445A does not even include the term, "antidegradation," nor define "RMHQ." As noted above, revisions made to the proposed rule will use the existing RMHQ program to provide antidegradation protection but also define what constitutes "higher water quality conditions" and how a RMHQ value would be developed to protect and maintain such conditions.</p>
7	NVMA	Antideg	<p>NDEP claims this will simplify and streamline the antideg review process, particularly in waters where RMHQs have not been established. We have not been able to identify where process simplification will occur, time frames for water quality analysis shortened or permitting times reduced.</p>	<p>The Division has revised the proposed rule to extend the current RMHQ approach, when warranted, to all parameters in all surface waters that are of higher quality than WQS. The objective of the proposed rule is to have a defined process in regulation to fully implement antidegradation reviews during development of point-source discharge permits, to ensure all surface waters are protected from degradation. The Division acknowledged during the April 2022 workshops that it has water quality data for 90% of the receiving waters in Nevada and has revised the proposed rule, whereby the the Division will conduct the antidegradation review and use the aforementioned water quality data information for RMHQ development when required. This revision will use the the accepted, current RMHQ approach and quality control inherent in this long-standing process to provide antidegradation protection.</p>
8	NVMA	Antideg	<p>The Division has not been able to demonstrate that the existing program to maintain higher water quality conditions be modified per direction by the USEPA.</p>	<p>EPA's audit and Permit Quality Review (PQR) did note the lack of antidegradation reviews during issuance of discharge permits. The proposed rule outlines the Division's statewide antidegradation policy, with the goal to provide clear procedures of how antidegradation reviews will be performed during issuance of a permit authorizing a point-source discharge.</p>

9	NVMA	Antideg	How does this proposed regulation simplify and expedite permits?	Per EPA's concern about the lack of antidegradation reviews on all permits and the AG's opinion that NV must apply a parameter-by-parameter approach, NDEP needed to articulate an antidegradation policy that could be applied to all parameters in all surface waters. NDEP determined that the most resource-efficient process would be to calculate RMHQs for parameters of concern at the time of permit application. The process is not intended to "expedite" permits; rather, it's to fulfill Clean Water Act requirements to maintain and protect higher water quality conditions.
10	NVMA	Antideg	These changes were "not requested by those currently holding discharge permits or from industries proposing discharges in the future"	NDEP is tasked with implementing the CWA and protecting waters from degradation, not waiting for requests for regulations from the regulated community.
11	NVMA	Proposed Reg	The regulation is 55 pages long; therefore, it is too complex.	Comment noted. In drafting the proposed rule LCB did use a 12-point font and double-spacing, as well as adding two dozen pages of conforming changes to existing water quality standards tables already in the NAC. All of these factors contribute to the 55-pages, as noted.
12	NVMA	Proposed Reg	There are guidance documents that are more than 97 pages long; therefore, the regulation is too complex. Neither the Antidegradation Implementation Procedures which is 36 pages long or the Antidegradation Permit Writers Guidance which is 61 pages long is part of the regulatory package or Nevada Administrative Code. Consequently, these guidance may be changed at random by the Division, without public input, which has the potential to introduce uncertainty, criticisms, and claims of lack of transparency. It is sound policy to regulate through the Nevada Administrative Code, not through guidance.	The regulatory requirements are appropriately contained in the regulation. The intent of the guidance documents were to provide additional information to permittees or applicants on the proposed antidegradation policy, and the implementation steps that are needed to prepare an antidegradation review. With the revisions made to the proposed rule, whereby the Division will conduct the antidegradation review, these guidance documents will be used as reference by permit writers, but are still made available to permittees or applicants for awareness of the procedural steps followed to conduct an antidegradation review.
13			The number of pages "demonstrate the significantly increased complexity of the proposed regulations and casts doubt on the long-term consistency"	See response above.
14	NVMA	Antideg & EAW	The implementing guidance covers topics that are "highly technical and esoteric."	The permit writers' guidance contains 37 pages describing the process, and also provides checklists and flow charts, as well as compiling (in appendices) the information for cost assessment in one convenient place. The intent of the guidance documents is to clarify these "highly technical and esoteric" issues.

15	NVMA	Proposed Reg	The reg is deficient in the following areas: it is not well thought out, nor vetted with the public and those regulated. It lacks clarity, and the objectives and impacts on public health, the environment, and fiscal obligations have not be determined.	Antidegradation protection is implemented during the permitting process on a case-by-case basis to protect better water quality conditions, when required. It is not possible to address the circumstances of every hypothetical situation. The Division has conducted public outreach and meetings with stakeholders over the past 2+ years. Covid-19 limited most meetings to online until recently. Meetings with individual stakeholders have also been conducted over this timeframe. All related documents have been posted on the Division's website. The Division conducted workshops to solicit helpful and meaningful input from stakeholders. The proposed rule has been revised in response to suggestions offered in comments submitted. The Division does not agree with determining the fiscal obligations to carry out Nevada statutory requirements but, as always, appreciates the critique offered.
16	NVMA	Antideg & EAW	A detailed fiscal analysis has not been presented for all hypothetical scenarios.	Every permit is addressed on a case-by-case basis. It is not possible to provide a detailed analysis for all hypothetical scenarios.
17	NVMA	Antideg	Mandatory reductions in permit concentration limits could be as high as 90%, resulting in the need for new, expensive, and perhaps technically infeasible treatment systems	The proposed rule has been revised to account for the inherent variability associated with surface water chemistry, and to better define when Tier 2 protection levels would be used as the applicable permit limits. In all cases, except discharges into EAWs, the permittee has the option to request an exemption based on social and economic factors. As noted by BWPC, Technology-Based Effluent Limits (TBELs) are evaluated for each permit, along with other factors. There is additional flexibility in the permitting program.
18	NVMA	Antideg & EAW	The lack of fiscal stewardship is a consistent criticism of government agencies. The undertaking of a substantial regulatory change without the appreciation of the potential increased cost to the taxpayers and the regulated community plays right into that narrative.	The regulation expands the current system of RMHQs to apply to all waters and all parameters of concern. The commenter seems to be requesting that no regulation ever be updated because it might have additional costs associated with it. Again, the Division cannot possibly evaluate every hypothetical situation, but that does not mean the proposed regulation is imprudent.
19	NVMA	EAW	The role of the Division in processing and EAW petition must be clarified. The Division's responsibility should be to provide objective, lawful and science-based recommendations to the SEC on the merits of a petition.	Based on comments received during the workshops, the Division has revised the proposed rule language to outline that a petition to nominate a surface water or segment of a surface water as an EAW must be submitted to the Commission by the nominating party.
20	NVMA	EAW	The SEC lacks the staff to independently evaluate petitions. The SEC will rely on the Division to perform an objective analysis of the petition and provide recommendations to the SEC on its merits.	See response above.

21	NVMA	EAW	The Division must remain a neutral and unbiased party when evaluating EAW petitions. The following language should be added to the proposed regulation to ensure this occurs, <i>"The petitioner is responsible for all costs associated with gathering and compiling data and information for an EAW petition."</i>	The Division has revised the proposed rule language to indicate that the nominating party will be responsible for gathering and compiling all information and data (if necessary) required to adopt a regulation classifying a nominated water as an EAW.
22	NVMA	EAW	The EAW process outlined in the regulations must be better defined. The EAW proposed regulatory language should outline clear and concise requirements and processes for the filing, evaluation, and consideration of a petition by the governing body.	Revisions have been made to the proposed rule to better define the EAW process. The requirements and processes noted in the comment are already contained in statutory and regulatory language specific to an individual filing a petition to adopt, amend, or repeal regulations.
23	NVMA	EAW	An EAW designation must ensure the protection of land use, water rights, and other values in and near the water body. Assurances of the protection of historic, current, and future land uses must be included in the regulations to avoid the introduction of uncertainty and impediments of existing easements and rights.	Comment noted. The Division agrees that information related to water quality or the recreational, ecological, or recreational significance of the waterbody may qualify it for consideration as an EAW. However, the additional information provisions contained in the proposed rule, address the information that will be needed by the Commission before they will act to designate the nominated surface water as an EAW.
24	NVMA	WOTUS	The Clean Water Act does not have a definition of Waters of the US (WOTUS), consequently this proposed rule is premature.	Nevada state statute NRS 445A.565 requires that surface waters of Nevada not be degraded. The WOTUS rule is irrelevant for the concept of antidegradation. It makes sense to adopt one process to cover both state and federal statute. This comment is interesting, considering that in the closing sentence of the comment letter, the NVMA indicates that the mining industry is focused on preserving and conserving the waters of Nevada, and protecting Nevada's high-quality waters.
25	Truckee Meadows Stakeholders	EAW	The proposed regulation relating to EAW designation remain problematic. As drafted, the categories for nominating a water are so broad that any almost any water could be nominated. At a minimum, the Division should create a list of priority waterbodies for nomination in Nevada based on specific criteria.	Comment noted. The supporting information and data that would need to accompany a nomination petition and provide a complete package on which to base a designation sets a "high-bar" for nominating a water. The Division creating a list of priority waterbodies for nomination would only be criticized by stakeholders, entities, and the regulated community. The intent of the proposed rule is to develop a process for nominating an EAW, describing how a nomination would be assessed, and what information will be required for the nominated water to be thoroughly vetted in the decision-making process. The process describes the requirements for information needed for the Commission to determine whether an EAW designation would be beneficial, and how an EAW would be protected (i.e., Tier 2.5 or Tier 3 protection).
26	Truckee Meadows Stakeholders	EAW	A similar strategy as used by Oregon to target areas and waters for designations would help guide future nominations to the intent of EAW designations and reduce the number of nominations received.	See response above.

27	Truckee Meadows Stakeholders	EAW	The burden to provide adequate information to nominate an EAW should fall upon the nominating party. Other western states (e.g. Montana, Arizona, New Mexico) have similar regulations requiring the nominator to provide the entire application package without assistance from the state agencies. Adopting a similar process would help reduce the potential impact to the Division resources.	Based on comments received during the public workshops, the Division has revised the proposed rule language to indicate that the nominating party will be responsible for gathering and compiling all information and data (if necessary) required to adopt a regulation classifying a nominated water as an EAW.
28	Truckee Meadows Stakeholders	EAW	The SEC will rely on the Division to provide a technical evaluation of a petition. As drafted the regulation presents a role conflict for the Division as it is drafting the petition and at the same time evaluating the petition and making a recommendation to the SEC. The current process whereby the application (nomination) would just go to the SEC should be followed.	Based on comments received during the public workshops, the Division has revised the proposed rule language to outline that a petition to nominate a surface water or segment of a surface water as an EAW must be submitted by the nominating party to the Commission.
29	Truckee Meadows Stakeholders	EAW	The SEC will rely on the Division to provide a technical evaluation of a petition. As drafted the regulation presents a role conflict for the Division as it is drafting the petition and at the same time evaluating the petition and making a recommendation to the SEC. The current process whereby the application (nomination) would just go to the SEC should be followed.	Comment noted. See above response.
30	Truckee Meadows Stakeholders	EAW	The specific data requirements necessary for an EAW nomination, particularly regarding water quality, need to be clearly outlined in the regulations. Regulation should indicate how many samples, for what time period, and what interval water quality data is needed to prove "higher quality". It should also specify what is credible evidence to support the petition.	The Division has revised the proposed rule language that if an EAW nomination is based on water quality, such nomination needs to demonstrate that the water quality is "significantly better" than the applicable water quality standards. "Significantly better" is defined in a later section of the proposed rule and is tied to development of RMHQs.
31	Truckee Meadows Stakeholders	EAW	Other EAW questions: What is the public notice, comment and engagement process for an EAW petition? Can additional data be provided by the public? If a waterbody is nominated and ultimately not granted EAW status, what are the criteria before it can be re-nominated?	An EAW petition would follow the same administrative rule-making process as any other water quality regulatory petition. This would entail stakeholder outreach and regulatory workshops; the SEC hearing, and adoption of the regulation classifying the water as an EAW; and approval by the Nevada Legislative Commission. Additional data could be provided by the public during the process. If a waterbody was not granted EAW status by the Commission, reasons would be provided as to why. If the deficiencies associated with the nomination could be resolved, the waterbody could be re-nominated for further consideration by the Commission.
32	Truckee Meadows Stakeholders	Antideg	As drafted the measurement location for determining antidegradation water quality review is not specified. If an existing discharge needs to expand its point source discharge, it is unclear whether "receiving water" quality will be determined upstream or downstream.	The Division has revised the proposed rule to clarify that, for purposes of an antidegradation review, the "...existing water quality level of a parameter of concern in the receiving water will be assessed at the downstream control point for the segment of the receiving water as described in NAC 445A.1239, or at the downstream edge of an approved mixing zone...".

33	Truckee Meadows Stakeholders	Antideg	When a permit renewal requests an increase in the flow limit in gallons per day of the discharge authorized by the permit, but does not change the composition of the discharge, it seems as though an antidegradation review should not be required since water quality criterion for each parameter are established through concentration-based effluent limitations, not through load-based limitations.	The Division has revised the proposed rule based on discussions during the workshops on this particular item. An antidegradation review would be conducted by the Division when an increase in the flow limit of the discharge results in an increase in the concentration of the parameters of concern in the discharge. If the concentrations of parameters and composition of the discharge remain unchanged, a requested increase in the flow limit of the discharge during a permit renewal will not trigger an antidegradation review.
34	PEW Charitable Trust	EAW	Several provisions in the proposed regulation set an almost insurmountable bar for a member of the public to nominate a waterbody for EAW status. 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	Comment noted. The Division agrees that information related to water quality or the recreational, ecological or recreational significance of the waterbody may qualify it for consideration as an EAW. However, the additional information provisions contained in the proposed rule will need to be compiled for consideration by the Commission before they will act to designate the nominated surface water as an EAW.
35	PEW Charitable Trust	EAW	We urge the State reconsider its decision to remove the EAW designation for Lake Tahoe from the proposed regulation and to include a Tier 3 EAW protection for Lake Tahoe into the final policy.	The Division believes that establishing a framework for nominating, evaluating, and approving a surface water that is acceptable to all parties who could be affected by an EAW designation is needed first, before a specific surface water is nominated. Currently, Lake Tahoe is the only waterbody in the Nevada water quality regulations that has the beneficial use of "waters of extraordinary ecological or aesthetic value," which assigns a higher level of water quality protection to the Lake to match the State of California's ONRW designation for the California side of the Lake.
36	PEW Charitable Trust	EAW	As drafted the regulation set forths several requirements for an EAW nomination that 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.	Comment noted. The intent is not to put an undue burden on a nominating party or deter the party from submitting a nomination. The additional informational requirements contained in the proposed rule are to ensure that a complete regulatory petition package is prepared for consideration by the Commission. If a person or a group wants to have a water classified as an EAW, they need to realize that it will take some work and commitment to take a nominated water through the regulatory process.
37	PEW Charitable Trust	EAW	Requirement for a watershed inventory are beyond the scope of what is contemplated in the Clean Water Act and could discourage members of the public from seeking to protect Nevada's most outstanding waters.	The Division has revised this requirement in the proposed rule to state that, in considering adopting a water as an EAW, it may be necessary to demonstrate that the provisions of title 48 of NRS will be unaffected. This demonstration may require providing information on existing and pending water withdrawals within the upstream and downstream boundaries of the proposed EAW, as well as any future uses of the surface water described in local, regional and state water planning and management plans.

38	PEW Charitable Trust	EAW	Requirement that an EAW nomination include a statement detailing the compatability of the classification with any preexisting or preauthorized land use activities on lands adjacent to the nominated surface water. 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 impact the water quality. Conversely, the EAW designation should not have any impact on existing land use activities.	The Division understands the comment and reasons for making it, but an EAW designation will need to be compatible with existing land uses and not impact these land uses. This topic has been mentioned numerous times during stakeholder outreach meetings and workshops. The Division feels that an EAW nomination will need to demonstrate that a designation will be compatible with existing land uses adjacent to waterbody.
39	PEW Charitable Trust	EAW	PEW supports robust public participation and comment opportunities during the EAW nomination process, however the Division should clarify that EAW criteria set forth in the draft regulation govern the designation and classification of these waters. The draft regulation related to outreach efforts should be shortened to <i>"Evidence of any public outreach and communication efforts."</i>	The Division feels that an EAW nomination will require support at a local level. Identifying this level of support prior to submitting a nomination would be important in the Division's opinion, as it would provide an indication to the nominating party of the effort that will be required to attempt to classify the water as an EAW.
40	PEW Charitable Trust	EAW	As drafted the draft regulation allows the Commission to require any other information or data to support the classification. This language fails to provide adequate guidance as it is too vague, potentially resulting in the requirement that a nomination include data beyond the scope of the regulation.	The Division agrees and has revised the proposed rule language for the reason noted in the comment.
41	PEW Charitable Trust	Antideg	If an Alternative Analysis is required due to a discharger not being able to meet a Tier 2 protection level for a parameter, the draft regulation language should be changed from the applicant "may consider" to "must consider" the alternatives as contained in the draft regulation language. An option for the Division to consider is the alternative analysis "should consider".	The Division agrees and has revised the proposed rule language to state that the Alternative Analysis "must include" the alternatives as contained in the draft rule language.
42	PEW Charitable Trust	Antideg	As drafted, the proposed regulation allows for temporary or limited lowering of water quality for situations directly linked to public health and safety or for any other purpose deemed permissible and necessary by the Division. This last allowance is overly broad and such an unbounded provision has the potential to undermine an EAW designation. The Division should expressly define the situations pursuant to which a temporary lowering of water quality is allowed.	The Division agrees with the comment and has removed the allowance noted in the comment. The situations when temporary lowering of water quality is allowed are included in the revised proposed rule.
43	Nevada Gold Mines	Proposed Reg	In response to latest, robust outreach, the Division will evaluate stakeholder comments, revise the proposed rule in response to those comments, and revise guidance documents to track any revisions to the rule. The Division will need to provide stakeholders and the regulated community time and opportunity to further evaluate the proposed regulation and associated guidance documents and assess associated implications.	Comment noted. The Division does plan to schedule further meetings with stakeholders to discuss changes made to the proposed rule based on comments from the workshops.

44	Nevada Gold Mines	Antideg	The proposed regulation should further clarify that degradation does not include any short-term or limited change to water quality.	The Division has revised the proposed rule to include in the section describing the provisions of the proposed antidegradation policy that antidegradation will not apply when an activity is necessary to accommodate public health and safety or when an emergency response is necessary to mitigate an immediate threat to public health or safety.
45	Nevada Gold Mines	Antideg	NRS 445A.565 does not prohibit the Division from evaluating whether a discharge will "briefly impact" receiving waters (as opposed to lowering the higher quality of the surface waters). Since the statute refers to the maintenance of the higher quality of the receiving water, the Division should look at the impact of a discharge to the receiving water quality rather than solely evaluating the concentration of any particular constituent in a discharge.	This matter was addressed in an Opinion of the Office of the Attorney General (June 20, 1984) as to whether "waters of higher quality," as used in NRS 445A.565, refers to each measured condition of water quality parameters, or the "overall" quality of water in any given segment. The conclusion expressed in this Opinion was the requirement of the statute refers to the quality of each measured parameter in the water.
46	Nevada Gold Mines	Antideg	The Division has acknowledged its reliance on a practical perspective - the RMHQ system - for protecting water quality when it is significantly better than the water quality standard. If a discharge is temporary or if its impact are limited, such a discharge could be characterized as insignificant and protective of the receiving water quality, negating the need for further antidegradation review, while remaining consistent with the statutory obligation to maintain the higher quality of those waters. Using a more practical approach that is consistent with Nevada law will likely result in a more reasonable and sustainable program for protecting Nevada's surface water resources.	The Division has revised the proposed rule language to use existing RMHQs and development of new RMHQs as the means to protect "significantly better" water quality conditions. Language has also been added to the proposed rule to define "significantly better" water quality conditions for an individual water quality parameter as being "25% better than the applicable water quality criteria." Incorporating the RMHQ system into the antidegradation policy as the means to provide Tier 2 protection for individual water quality parameters will provide a more flexible and practical approach for protecting water quality conditions in a reasonable manner.
47	Nevada Gold Mines	EAWs	NGM would like to better understand the Division's approach to have two (2) different processes for nominating EAWs. Given that the ultimate determination is made by the SEC, why have a separate process with NDEP?	The proposed rule has been revised to contain only one process - submittal of nomination to the Commission by the nominating party. This submission must have the information and data to support the nomination.
48	Nevada Gold Mines	EAWs	NGM suggests that the rule provide additional clarity specifying that the information necessary to nominate an EAW must be assembled by the nominating party and that the nominating party will be responsible for all associated costs. The Division should not assume the burden of data collection and other requirements for EAW nominations, which could affect resources essential other programmatic commitments.	The Division has revised the proposed rule language to indicate that the nominating party will be responsible for gathering and compiling all information and data (if necessary) required to adopt a regulation classifying a nominated water as an EAW.

49	Nevada Gold Mines	EAWs	<p>As drafted, the proposed regulation specifies that a discharge in place before the receiving water is classified as an EAW continues to be authorized provided that the discharger maintains the existing permitted flow, effluent limitations and other conditions and requirements of the original permit and the permit holder does not request to expand or modify the point source discharge or the zone of mixing. If changes to the discharge stem from the Division adopting new criteria for a particular constituent and a permit is opened to address the same with new effluent limitations, does that revised condition undermine the authorization of a long-standing existing discharge? Similarly, if effluent limits need to be revised pursuant changes in the Division's waste load analysis, would such undermine the authorization of a long-standing discharge?</p>	<p>The two examples used in the comment would not undermine the authorized "existing" status of the discharge. If a new water quality criteria is adopted for a parameter of concern in the discharge and a new effluent limit must be included in the permit, an antidegradation review would be conducted to determine the appropriate effluent limit for just the new parameter of concern that would be added to permit. Similarly, if a TMDL was revised, resulting in a change to the waste load allocation (WLA) for an impaired parameter of concern, the permit would be opened to incorporate the revised WLA. This would not trigger an antidegradation review for this parameter of concern, as it would already be assigned a Tier 1 protection level per the proposed antidegradation policy. An antidegradation review of the other parameters of concern in the discharge would not be done, as long as the point source discharge was not expanded or another type of major modification was not requested.</p>
50	Nevada Gold Mines	EAWs	<p>The Division should consider clarifying the grandfather provision to ensure existing and pending discharges and potential discharges are not affected by an EAW nomination even if those discharge conditions evolve over time. Further, there may be circumstances where an expansion of an existing discharge results in insignificant impacts to the classified EAW. In that instance, such a discharge should not be prohibited.</p>	<p>For the reasons noted in the comment, the Division has maintained in the proposed rule, language that the evaluation of existing discharges and possible expansions be required as information to support an EAW nomination. If the nominated surface water was to be classified as an EAW, knowing if there are existing discharges into the nominated water or into an upgradient tributary water, will help guide the Commission's decision as to what antidegradation tier level should be assigned to the EAW. NRS 445A.565 does not allow for "de-minimus" reductions in water quality conditions.</p>
51	Nevada Gold Mines	EAWs	<p>The Division has recognized its authority to review and authorize new or expanded discharges into Tier 2.5 waters provided those discharges do not degrade the water quality or other attribute of the classified water. A strict interpretation in characterization degradation as proposed does not provide for exceptions for activities that result in temporary and short-term changes in water quality to be allowed.</p>	<p>The Division has revised the proposed rule to include in the section describing the provisions of the proposed antidegradation policy that antidegradation will not apply when an activity is necessary to accommodate public health and safety or when an emergency response is necessary to mitigate an immediate threat to public health or safety. This exemption would apply to EAWs as well.</p>
52	Nevada Gold Mines	EAWs	<p>Under the proposed rule, new or expanded discharges that occurs upstream of a Tier 3 or Tier 2.5 water could be precluded if the discharge degrades the water quality of the classified water or impacts an attribute of the classified water. The Division should assess the temporal nature of any change and should not simply compare the baseline receiving water quality with the end of pipe chemistry of the effluent, i.e., an apples to oranges comparison.</p>	<p>The impacts to a downstream waterbody need to be considered when authorizing a point-source discharge upgradient of an EAW. The Division currently evaluates such, and this is a primary reason for the "tributary rule" (NAC 445A.1239). This comment has been raised multiple times by Nevada Gold Mines, and the Division would be interested to hear Nevada Gold Mines' proposal on how to evaluate the impacts of a point source discharge to the receiving water that would not be the "apples to oranges comparison."</p>

53	Nevada Gold Mines	EAWs	<p>Other practical implementation questions associated with discharges upstream of a classified EAW exist. At what point would the Division assess evidence of degradation in the downstream classified water? Does an upstream discharge to an ephemeral wash that reaches an EAW, need to meet the water quality associated with the EAW, at the confluence or further downstream? What if the upstream ephemeral water only reaches the EAW under periods of high or low flow? Per NAC 445A. 122 whereby water quality standards do not apply during periods of extreme high or low flow, would an antidegradation review be required. The Division may want to consider whether it needs to further clarify circumstances under which upstream discharges would not trigger antidegradation-related regulatory scrutiny.</p>	<p>The Division would evaluate the impact of an upgradient discharge to the downstream EAW at the confluence of the tributary with the EAW. Pursuant to NAC 445A.1239, a control point would be established in the EAW to assess evidence of degradation. The exact location of the established control point would be subject to site-specific conditions (e.g., access, topography, etc.). A discharge to an ephemeral wash that reaches an EAW would need to meet water quality associated with the EAW. This is the current procedure used by the Division. If the ephemeral wash becomes a flowing water that reaches a downstream waterbody, the water quality in the downstream water must be maintained and protected. This would not be applicable if the discharge into the ephemeral wash only reaches the downstream waterbody during periods of high flow, or if the discharge is treated wastewater resulting in the ephemeral wash becoming an "effluent-dominated water." The Division feels that further clarification of the above-described circumstances in the proposed rule is not necessary, as this is the current procedure followed when evaluating discharges into ephemeral washes.</p>
54	Nevada Gold Mines	Antideg	<p>If NDEP adopts new water quality standards or incorporates new analytical methods that expand its ability to detect constituents in a discharge, do those changes (absent any other revisions by the permittee) constitute modifications that trigger antidegradation review? Presuming that is not the Division's intent, further considerations of the thresholds that trigger antidegradation review may be appropriate.</p>	<p>Generally, when a new water quality standard is adopted or a current standard is revised for a parameter of concern in the discharge, the permit limit for the parameter of concern is amended during the permit renewal, unless there is a compelling reason to amend the limit prior to the renewal. This would also be true if a new analytical method is certified for a parameter of concern. In both instances, an antidegradation review would be conducted just for the specific parameter of concern, assuming that no other changes are made that would be considered an expansion of the existing discharge. The proposed rule language is specific as to what is considered an expanded point discharge, and the thresholds referred to in the comment may be more appropriate in the <i>Nevada's Antidegradation Permit Writers' Guidance</i>.</p>
55	Nevada Gold Mines	Antideg	<p>The Division's proposed baseline water quality rule assigns the burden of collecting water quality on the permittee which could prompt burdensome data collection requirements that could result in inconsistencies and discrepancies. Since the Division acknowledged through the April 2022 workshops that it has water quality data for 90% of the receiving waters in Nevada, could the Division establish schedules prioritizing particular areas for RMHQ development or additional data collection rather than bypassing the current RMHQ approach and quality control inherent in this long-standing process that has been implemented for years?</p>	<p>As noted in comment, the Division has water quality data for 90% of the surface waters across the State that currently have a discharge going into them or could receive a new discharge. The language in the proposed rule has been revised to stipulate that RMHQs will be developed by the Division to be used as the Tier 2 protection levels, where applicable.</p>

56	Nevada Gold Mines	Antideg	The proposed rule does not clarify how the antidegradation program changes would be implemented with respect to ephemeral waters in Nevada. How would a project proponent evaluate baseline and antidegradation obligations for features that do not reach downgradient surface waters? Alternatively, if discharges to ephemeral features flow into downstream waters, how will a project proponent document that those flows may not warrant further review, e.g., from a water quality perspective?	See response above related to ephemeral channels. Evaluating discharges into ephemeral waters is already evaluated based on existing Division procedures during the permit development process. If the discharge into an ephemeral feature would not reach a downstream waterbody, per the antidegradation policy, permit limits would be set at Tier 1 protection levels, which would be the water quality standards for the parameters of concern. The Division has also defined an "effluent-dominated water" as having Tier 1 protection, aside from existing RMHQs and TMDLs.
57	Nevada Gold Mines	Antideg	If discharges to ephemeral waters are characterized by the Division as not compromising the quality of the receiving waters (e.g., because the changes are limited in terms of reach or because the changes are short-term or because the changes would only occur during extreme flow conditions), those discharges should not be subject to the detailed and time consuming approach that could be triggered if the receiving waters are considered Tier 2 (e.g., as a result of the tributary rule) with water quality better than standards.	The antidegradation provisions in the proposed rule would not apply when an activity, which may result in temporary or limited lowering of water quality levels, is necessary to accommodate public health and safety, or for an emergency response to mitigate an immediate threat to public health or safety. Temporary and limited impacts would also be applicable during extreme flow conditions.
58	Nevada Gold Mines	Proposed Reg	NGM recognizes the Division is seeking to clarify its role established in statutory requirements and to enhance stewardship over the State's surface waters. NGM suggests that the proposed rule changes be further evaluated to avoid unforeseen complications that could be burdensome and potentially confusing for all stakeholders.	Comment noted.
59	Western Resource Advocates	Proposed Reg	Federal regulations (40 CFR Section 131.12) requires States to adopt and implement an antidegradation policy that provides a higher level of protection for waters of high quality and waters of exceptional recreational or ecological significance. The antidegradation rule further requires that these "outstanding waters" be protected from degradation. This is achieved by prohibiting new or increased discharges to the outstanding waters and by banning new or increased discharges to tributaries to the outstanding waters that would lower water quality in the water.	Comment noted.
60	Western Resource Advocates	Proposed Reg	Under 40 CFR Section 131.12, a water qualifies for outstanding water designation where that water is of high quality or has unique characteristics, including because it is a water of exceptional recreational, environmental, or ecological significance. Therefore the process of nominating and designating an outstanding water must focus on these same attributes - whether the water is of high quality, is a water of exceptional recreational, environmental, or ecological significance or otherwise has unique characteristics to be preserved.	Comment noted. The Division agrees that information related to water quality or the recreational, ecological or recreational significance of the waterbody may qualify it for consideration as an EAW. However, the additional information provisions contained in the proposed rule will need to be compiled for consideration by the Commission before they will act to designate the nominated surface water as an EAW.

61	Western Resource Advocates	Proposed Reg	<p>While we appreciate the Division's efforts to initiate these regulations and set up a process to protect Nevada's outstanding waters, as currently written, the draft rule mandates that the nominator provide extensive information and analysis addressing several multi-faceted factors unconnected to water quality or ecological or recreational significance that will be highly onerous for the public - even with the assistance of the Division - to collect and undertake. As a result, we believe that the draft regulations are not keeping with the Clean Water Act and the requirement that Nevada Water Quality Standards include an antidegradation provision that provides for the maintenance and protection of high quality waters and waters of exceptional recreational or ecological significance.</p>	See response to comment above.
62	Western Resource Advocates	EAW	<p>Suggested edits provided by WRA on informational requirements currently in the proposed EAW section of the regulation that must accompany a nomination. The information criteria should focus on the attributes of the water that would qualify it as EAW - whether the water is of high quality, is a water of exceptional recreational, environmental, or ecological significance or otherwise has unique characteristics to be preserved. This would still provide ample direction to the Commission and specify exactly what the Commission should consider as it reviews as EAW nomination.</p>	See response to comment above.
63	Western Resource Advocates	EAW	<p>The information that should accompany an EAW nomination should be limited to what is currently in Section 2.3(a) (1) through (4):</p> <p><i>(1) The name of the surface water;</i> <i>(2) A map showing location and the upstream and downstream boundaries of the nominated EAW</i> <i>(3) Reason for the nomination</i> <i>(4) Evidence, including available water quality data that supports the existence of the higher water quality or extraordinary ecological, aesthetic or recreational value and to establish a baseline water quality for the proposed water.</i></p>	The Division agrees that information required in (1) through (4) would focus on why the surface water should be an EAW, but the Division feels that information in (5) to (9) will be needed to demonstrate compatibility and public support at a local level for the classification.
64	Western Resource Advocates	EAW	<p>Members of the public nominating a water for EAW designation are responsible for providing the above information "to the extent" that information "is available". This suggestion would clarify that an EAW nomination should not be rejected simply because the information required is not available.</p>	Comment noted and the proposed rule has been revised to include the suggested language for the reason noted in the comment.

65	Western Resource Advocates	EAW	If a member opts to work with the Division in order to complete their nomination petition, language is needed to clarify that the Division will cooperate with that person to gather the information and analysis required by Section 2.3(a). As currently written, the Division has no obligation to work with the public and therefore to provide its support and expertise to individuals as they attempt to comply with the onerous information criteria.	Based on comments made during the workshops, the proposed rule has been revised to contain only one process. The nominating party must submit the nomination to the Commission, along with information and data needed to support the nomination.
66	Western Resource Advocates	EAW	WRA suggests that the criteria contained in Sections 2.3(a)(5) through (8) be removed as they require data and analysis that: 1) are not directly relevant to whether the water is of high quality, is a water of exceptional recreational, environmental, or ecological significance or otherwise has unique characteristics to be preserved; 2) are beyond the expertise and resource capabilities of most members of the public; 3) may not exist; 4) places an onerous burden on persons seeking to nominate a water as an EAW; and 5) is not properly consistent with the federal Antidegradation Policy and the Clean Water Act.	See response to comment above as to the explanation for the additional information requirements.
67	Western Resource Advocates	EAW	Though we believe that requiring the information in these subsections is inappropriate, we do understand that this information and analysis could be of interest to the Commission and thus strengthen a nomination. We propose that the information in these subsections and other information the Division believes would be persuasive to the Commission, be listed in a non-regulatory guidance document or other resource available to the public to assist nominators in developing nominations with a greater chance of success.	The suggestion of including the additional information requirements in a guidance document rather than in the regulation has the potential to introduce criticism that the Division is making regulatory decisions based on guidance documents. Criticisms could also arise that the Division could make modifications to the guidance document without public input.
68	Western Resource Advocates	EAW	If the above noted criteria sections are removed, the resulting rule would still provide the particular criteria by which the Commission would determine whether a water should be designated as an EAW and still provide sufficient direction to the Commission and specify exactly what the Commission should consider as it reviews an EAW nomination.	Comment noted, but please see above response as to why the Division feels that the additional information will be required for a surface water to be classified as an EAW.
69	Western Resource Advocates	EAW	The criteria contained in Section 2.3(a)(9) for nominating a water include <i>"Any other information or data required by the Commission to support the classification"</i> should be removed because there is no way for persons seeking to nominate an EAW and preparing their petitions to know what other information the Commission may require. Moreover, because the rule does not specify what this information might be or how the Commission might evaluate it, this subsection would run afoul of standard administrative procedures.	This criterion was removed from the revised proposed rule language for the reason noted in the comment.

70	Western Resource Advocates	EAW	We propose adding language that if a person makes a nomination to the Division, there should be an established timeframe for the nominator and Division to finalize and EAW nomination (6-months suggested). This timeframe could be extended if agreeable to both parties to allow more time to prepare an EAW nomination. Additionally, the proposed rule should clarify that the person seeking to nominate an EAW would continue to have a role in making a recommendation on the tier of antidegradation that should be applied to the nominated water.	Based on feedback from the workshops, the proposed rule has been revised to contain only one process - submittal of nomination to the Commission with information and data to support the nomination. The nominating party could suggest a recommended tier of antidegradation protection in the regulatory petition, but as noted in the proposed rule language, the Commission will make final decision as to the tier of antidegradation protection that will be applied to the EAW.
71	Western Resource Advocates	EAW	We propose adding language that if a person makes a nomination directly to the Commission, a person should be responsible for providing the information, as currently contained in the rule, to the extent that such information is available.	Comment noted.
72	Western Resource Advocates	Antideg	We recommend that the references to "the 95th percentile" included in the definition of "baseline concentration" - which determines whether Tier 2 review will be applied to a waterbody for a particular parameter be changed to "50th percentile". Substituting 95th percentile with 50th percentile is consistent with federal antidegradation rule and will more appropriately apply Tier review to Nevada waters with water quality that exceeds levels necessary to protect fish, wildlife and recreation.	The revised proposed rule will use the established RMHQ program for setting Tier 2 protection levels under the antidegradation policy. The development of a RMHQ based on the 95th percentile value of the water quality data set (ideally, 20 samples) has been approved by EPA and used by Nevada for decades. Setting a 50th percentile would, by definition, result in 50 percent of background exceeding that value. Use of a 50th percentile to define "background water quality" is a flawed approach.
73	Las Vegas Stakeholders	Proposed Regulation	The proposed regulation seems to make insignificant changes in water chemistry more important than actual environmental issues. The proposed rule presents a mechanical application that eliminates good judgment. But permit decisions should be driven by real environmental issues, not by minor measurement differences that do not affect anything that needs to be protected.	The Division has revised the language in the proposed rule to account for the inherent variability in water quality that occurs on a temporal (as well as a spatial) scale, by defining "significantly better" water quality conditions. The definition is based on protocols previously established for revising an RMHQ, as described in Nevada's Continuing Planning Process (CPP) document. As described in the CPP, values for a parameter of concern would need be at least 25% better than the most-restrictive water quality standard for that parameter in the receiving water.
74	Las Vegas Stakeholders	Proposed Regulation	The proposed regulation would make unimportant issues - trivial changes in water chemistry that have no real-world consequences - the driver in permit requirements. These requirements imposed to prevent insignificant changes in water chemistry are likely to have huge effects on dischargers, who in many cases will have no ability to prevent those insignificant changes.	Comment noted. See above response.
75	Las Vegas Stakeholders	Proposed Regulation	The proposed regulation should allow NDEP to exercise judgment so that in an individual case, trivial changes in water chemistry - an unimportant consequence - can be distinguished from changes that are important for protecting the environment.	Comment noted. See above response.

76	Las Vegas Stakeholders	Proposed Regulation	<p>NDEP already has an antidegradation program, which is implemented primarily through the establishment of RMHQs. This program has been effective. In EPA's 2017 Nevada Permit Quality Review, EPA said nothing negative about the current antidegradation program. The document stated that NDEP was in the process of updating their statewide antidegradation policy with the goal to provide clear procedures of how antidegradation reviews will be performed during NPDES permit issuance.</p>	<p>Per EPA's concern about the lack of antidegradation reviews on all permits, and the AG's opinion that NV must apply antidegradation protection on a parameter by parameter approach, NDEP needed to articulate an antidegradation policy that could be applied to all parameters in all surface waters. Based on discussion during the workshops and comments submitted, the Division has determined that the most resource-efficient process would be to follow the existing RMHQ program to protect higher water-quality conditions for parameters of concern, when applicable. The Division will use this approach to satisfy the antidegradation review required prior to issuance of a discharge permit.</p>
77	Las Vegas Stakeholders	Proposed Regulation	<p>Although water quality is not so neatly sorted into grades or levels, the concept is a necessary part of antidegradation. A water is not degraded when it is affected by <i>any</i> change in chemistry, only those changes that lower it to an inferior <i>grade</i> or <i>level</i>.</p>	<p>Comment noted.</p>
78	Las Vegas Stakeholders	Proposed Regulation	<p>Any interpretation of NRS 445A.565 which specifies the antidegradation principles should recognize that the Legislature did not intend the statute to apply rigidly to no change or no measurable change in water chemistry. The Legislature undoubtedly intended the statute to apply to changes in the grade or level of a parameter or stream, which would allow for <i>some</i> change in water chemistry, but prohibit changes that are severe enough to change the "level" of water quality.</p>	<p>Comment noted. As explained in prior response, the Division has defined in the revised proposed rule, what would be "significantly better" water quality, with the intent that it would account for the inherent variability in water quality levels that occur in a surface waterbody.</p>
79	Las Vegas Stakeholders	Proposed Regulation	<p>The mechanistic aspects of the proposed rule suggest that NDEP may not want to use its judgment - that it may be looking for a procedure that is so straightforward and clear that it can be easily applied by anyone. But antidegradation is not susceptible to simple procedures. Judgment is essential.</p>	<p>Comment noted.</p>
80	Las Vegas Stakeholders	Antideg	<p>The proposed regulation blends parameter-by-parameter antidegradation with "overall" quality degradation for Tier 2.5 and Tier 3 waters. Per the 1984 Attorney General's opinion, NRS 445A.565 must be applied parameter-by-parameter, rather than overall quality of the water which the proposed regulation does for Tier 3 and Tier 2.5 protection.</p>	<p>Tier 3 and Tier 2.5 would be assigned to EAWs; the distinction between the two is that no future direct discharges into a Tier 3 EAW are allowed, whereas future discharges into a Tier 2.5 EAW are allowed, as long as the existing tier of protections for the individual parameters of concern are maintained and protected. The individual parameters of concern in the Tier 2.5 EAW could be a combination of Tier 2 and Tier 1 protection levels, depending on baseline water quality for the parameters of concern in the water. Although a new or expanded direct discharge into a Tier 3 EAW would not be allowed, the proposed rule allows for discharges into upgradient tributary waters, as long as such discharges maintain the protection levels for parameters of concern in the Tier 3 water. Similar to the above, individual parameters of concern in the Tier 3 water may be Tier 2 or Tier 1. This requirement would also apply if a discharge was into a upgradient tributary to a Tier 2.5 EAW.</p>

81	Las Vegas Stakeholders	Antideg	The proposed rule flips the relationship of NDEP and the SEC. The SEC sets water quality standards and NDEP issues permits. The proposed rule would have NDEP setting water quality standards based on "back-of-the-envelope" calculations and the SEC issuing permits whenever there is "degradation".	See response to above comment that explains that the Division has elected to use the established RMHQ program to set Tier 2 protection levels for parameters of concern in the receiving water, when necessary. If a discharger could not meet these Tier 2 protection levels, NRS 445A.565 allows them to petition the Commission to grant approval to the Division to use a less restrictive limit in the discharge permit.
82	Las Vegas Stakeholders	Antideg	Proposing water quality standards is difficult precisely because they have such important consequences for the regulated community. The formal procedures encourage NDEP to collect sufficient data so that it can present its proposal with confidence, and to work with the regulated community so that the SEC can receive the proposal without objection. The existing RMHQ process allows for a consideration of the consequences of new standards, by the local community most affected by those standards, one at a time.	Comment noted. Adopting a process to develop outcomes is what EPA refers to as "a performance-based approach." EPA notes that a performance-based approach relies on the adoption of a process rather than a specific outcome. As stated by EPA, a " <i>performance-based approach relies on the State specifying implementation procedures (methodologies, minimum data requirements, and decision thresholds) in its water quality standards regulation.</i> " Nevada's RMHQ process does this.
83	Las Vegas Stakeholders	Antideg	The proposed rule specifies that the baseline concentration "is equal to the 95th percentile value calculated for each parameter, using chemical data from a minimum of three samples." Three samples will be insufficient to make an accurate determination of baseline concentrations. Because water quality varies so widely, it could be off by an order of magnitude or more and result in improper effluent limits.	In the revised proposed rule, the concept of calculating an IBV based on a minimum of three samples has been removed. Instead, the Division will rely on the established RMHQ program to develop Tier 2 protection levels based on sufficient water chemistry data (ideally, 5-years of quarterly samples).
84	Las Vegas Stakeholders	Antideg	NDEP has said that most dischargers will not need to collect samples, because there are monitoring programs for most waters into which major dischargers discharge. But then there is no reason to require dischargers to submit an antidegradation review. NDEP can do the review itself. If NDEP does not have sufficient data to do a proper antidegradation review, it should not do one.	The Division has revised the proposed rule to indicate that the Division will complete the antidegradation review for a discharge permit and discuss the results of the review with the discharger or applicant. The Division disagrees with the comment statement that if there is not sufficient data to do an antidegradation review, one should not be done. A discharger or applicant should be taking the initiative to schedule a meeting with the Division prior to submitting an application so that such situations can be identified well in advance and sufficient water chemistry data of receiving water can be collected if additional data are needed.

85	Las Vegas Stakeholders	Antideg	<p>The proposed regulation could result in wastewater treatment plants having to remove very small concentrations of consumer-product substances and iron from their discharge in order to comply with permit limits issued in accordance with the proposed regulation. Treatment plants cannot realistically increase their removal rate for consumer products and substances like iron because the concentrations are just too low and flow of wastewater is just too great. As a result, the proposed regulation could prohibit the growth of Nevada's municipalities, or at least severely interfere with it.</p>	<p>The intent of the proposed rule is to evaluate the potential impact of parameters of concern in a discharge to the corresponding level of the parameters of concern in the receiving water. A parameter of concern would have an associated water quality standard in the NAC or be a priority pollutant. To address the concern expressed in the comment, the Division has revised the definition of a parameter of concern in the proposed rule to include "...when determined by the Department to be of concern in the receiving water." The Division has also defined an "effluent-dominated water" for cases where the discharge creates a perennial waterbody or otherwise provides significant flow (i.e., more than 80% of the flow for more than 300 days per year) downstream of the discharge. In such waters, Tier 1 would apply to all parameters other than those with TMDLs or existing RMHQs.</p>
86	Las Vegas Stakeholders	Proposed Regulation	<p>A significant problem with the proposed regulation is it allows a change in <i>any</i> substance, no matter how insignificant, to be labeled as degradation, and thus, prevent <i>real</i> improvement. NDEP should not let a false determination of degradation interfere with real environmental issues, including real improvements to water quality as a result of the discharge.</p>	<p>Comment noted. The revisions that have been made to the proposed rule to move away from a mechanistic evaluation of changes in water quality levels for individual parameters will allow for the flexibility as described in the comment. See also, response above.</p>
87	Las Vegas Stakeholders	Antideg	<p>The proposed regulation should focus on true parameters of concern. This could be accomplished by the addition of judgment to the definition. Suggested edit in italics: "'Parameter of concern' means a parameter with a water quality standard set forth in NAC 445A.11704 to 445A.2234, inclusive, <i>when determined by NDEP to be of concern to the water at issue</i>"</p>	<p>See response to comment above.</p>
88	Las Vegas Stakeholders	Antideg	<p>The proposed regulation specifies that a person does not need to submit an antidegradation review if the applicant "Does not request to expand or modify the point source discharge or the zone of mixing". But if a municipality needs to expand or modify their discharge due to growth in population, an antidegradation review that would impose difficult-to-meet requirements, then a rational municipality will not expand or modify their discharge. An existing discharge should be governed by the law as it existed when the discharge was permitted. Imposing new requirements on a pre-existing facility should be prohibited. The reason for grandfathering is that imposing new requirements on old developments implicates the prohibition on taking without just compensation, as well as concepts of estoppel.</p>	<p>The Division understands the concern expressed in the comment and the intent of the proposed rule is not to impose new regulatory requirements on a pre-existing facility. An exception to the above could be when a new water quality standard is adopted for a parameter which happens to be in the discharge from the pre-existing facility. A new limit could be added to the pre-existing facility's permit after an antidegradation review was conducted for that specific parameter of concern. However, if the expansion of the pre-existing facility's discharge involved a greater discharge rate with a change in the composition of the discharge, an antidegradation review would be conducted. See also, the addition of a definition for an "effluent-dominated water." For effluent-dominated waters, a Tier 1 level of protection would apply, except for parameters with TMDLs or existing RMHQs.</p>

89	Las Vegas Stakeholders	Antideg	Samples taken to establish baseline water quality should be taken downstream, not upstream. The proposed regulation should make clear that the baseline is measured in waters that the proposed change will affect - water <i>downstream</i> of the proposed discharge or modification.	The Division has revised the proposed rule language to clarify that the baseline water quality level of a parameter of concern in the receiving water will be assessed at the downstream control point of the receiving water as described in NAC 445A.1239 or at the downstream edge of an approved zone of mixing. See also, the addition of a definition for an "effluent-dominated water." For effluent-dominated waters, a Tier 1 level of protection would apply, except for parameters with TMDLs or existing RMHQs.
90	Las Vegas Stakeholders	Antideg	The proposed regulation requires the municipality to impose additional treatment: 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". Although the regulation does not explain what this means, increasing treatment for the Las Vegas Valley discharges will certainly cost hundreds of millions of dollars, and could exceed one billion dollars.	This criteria is considered when a discharger cannot meet a Tier 2 protection level and requests a less-restrictive permit limit based on social and economic considerations. Before the Commission would approve the Division using the less-restrictive limit in the discharge permit, the Division would consider whether the discharger is using 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 and not being able to attain the Tier 2 protection level in the discharge. The intent is not to impose increased treatment costs on a discharger.
91	Las Vegas Stakeholders	Antideg	Permit-limit statistics should match baseline statistics if goal is to prevent any change from baseline. Since the baseline statistic appears to be the 95th percentile based on five years of data, a permit limit should be phrased to prohibit the exceedance of that concentration more than 5% of the time over the last five years.	This comment is beyond the scope of the proposed rule and would be best addressed in a separate discussion with the Division's Water Pollution Control staff.
92	Las Vegas Stakeholders	Antideg	The existing RMHQ program has not been controversial. It has the great advantage of setting requirements segment by segment, so that the affected community can consider the actual numbers being proposed and evaluate the actual affects. NDEP should seriously consider proceeding with the existing RMHQ program rather than creating a new program.	As noted in responses to above comments, the Division will use the existing RMHQ program to set Tier 2 protection levels for parameters where applicable. Additional clarification has been added to the proposed rule to define when and how an RMHQ will be developed.

93	Humboldt River Basin Water Authority (HRBWA)	Antideg	HRBWA questions the necessity to establish an entirely new process for antidegradation that is more complex and costly than existing requirements. Regulated entities and the general public would be better served by NDEP continuing its existing antidegradation and prioritizing the development of additional RMHQs.	The Division has revised the proposed rule to extend the current RMHQ approach, when warranted, to all parameters in all surface waters that are of higher quality than WQS. The objective of the proposed rule is to have a defined process in regulation to fully implement antidegradation reviews during development of point-source discharge permits, to ensure all surface waters are protected from degradation. The Division acknowledged during the April 2022 workshops that it has water quality data for 90% of the receiving waters in Nevada and has revised the proposed rule, whereby the the Division will conduct the antidegradation review and use the aforementioned water quality data information for RMHQ development when required. This revision will use the the accepted, current RMHQ approach and quality control inherent in this long-standing process to provide antidegradation protection.
94	HRBWA	Antideg	It does not appear that the EPA is requiring these proposed changes or that the existing process is delaying projects proposing a permitted discharge to waters for which limited or no data are available to establish RMHQs.	EPA's audit and Permit Quality Review (PQR) did note the lack of antidegradation reviews during issuance of discharge permits. The proposed rule outlines the Division's statewide antidegradation policy, with the goal to provide clear procedures of how antidegradation reviews will be performed during issuance of a permit authorizing a point-source discharge.
95	HRBWA	Antideg	The proposed changes include 55 pages of regulatory language, 67 pages of implementation procedures and a 69 permit writers guide. HRBWA believes the guidance documents were not sufficiently vetted. While not part of the proposed regulations, these documents explain how NDEP intends to regulate and use its enforcement discretion. Any subsequent revisions of the antidegradation policy implementation methods should include an opportunity for public involvement.	Comment noted. In drafting the proposed rule LCB did use a 12-point font and double-spacing, as well as adding two dozen pages of conforming changes to existing water quality standards tables already in the NAC. All of these factors contribute to the 55-pages, as noted. The regulatory requirements are appropriately contained in the regulation. The intent of the guidance documents were to provide additional information to permittees or applicants on the proposed antidegradation policy, and the implementation steps that are needed to prepare an antidegradation review. With the revisions made to the proposed rule, whereby the Division will conduct the antidegradation review, these guidance documents will be used as reference by permit writers, but are still made available to permittees or applicants for awareness of the procedural steps followed to conduct an antidegradation review.
96	HRBWA	Antideg	A Small Business Impact Statement has not been prepared as required by NRS 233B.0608, to provide an analysis of potential economic burden to small business that could result from the proposed regulations.	A Small Business Impact Statement has been prepared based on the proposed revised regulation. This statement will continue to be refined based on discussion and comments made during the workshop.

97	HRBWA	Antideg	The proposed antidegradaton regulations are overly complex, potentially costly and will not improve the protection of water quality or result in more efficient and timely permitting.	Based on discussion during the workshops and comments submitted, the Division has determined that the most resource-efficient process would be to follow the existing RMHQ program to protect higher water-quality conditions for parameters of concern, when applicable. The Division will use this approach to satisfy the antidegradation review required prior to issuance of a discharge permit. Incorporating the RMHQ system into the antidegradation policy as the means to provide Tier 2 protection for individual water quality parameters will provide a more flexible and practical approach for protecting water quality conditions in a reasonable manner.
98	HRBWA	EAWs	HRBWA believes that the proposed regulations do not provide a clear understanding or process for EAW designations. The EAW qualifications (currently contained in the proposed rule) are broad and ambiguous. Unique water quality characteristics and important ecological, aesthetic or recreational value are ambiguous terms that should be defined or clarified so there is an understanding of how they will be interpreted and applied.	The Division drafted the proposed rule language with the intent that it would be up to a petitioner to identify and describe the qualification criteria or factors that would make a waterbody a candidate EAW. For example, the petitioner would need to provide supporting information and data to that the surface water had pristine or naturally occurring water quality conditions that would make the waterbody special; or demonstrate that it has outstanding biological diversity that gives the waterbody ecological value, or show that the presence of an outstanding fishery provides a regionally unique recreational value, both of which categorize the water as having exceptional recreational and aesthetic value.
99	HRBWA	EAWs	The bifurcated process for nominating an EAW is confusing and not well defined. This process creates confusion and creates dissimilar roles for NDEP depending on how the EAW nomination is submitted. NDEP should be utilizing existing resources to gather required information to support an EAW nomination.	Based on comments received during the workshops, the Division has revised the proposed rule language to outline that a petition to nominate a surface water or segment of a surface water as an EAW must be submitted to the Commission by the nominating party.
100	HRBWA	EAWs	If the petition is submitted directly to the Commission, the Commission has 30 days to evaluate the merits of the nomination and notify the nominator if the Commission will initiate regulatory proceedings or deny the petition. The process to evaluate a nomination within 30 days, including NDEP's role is not well defined.	Revisions have been made to the proposed rule to better define the EAW process. The requirements and processes noted in the comment are already contained in statutory and regulatory language specific to an individual filing a petition to adopt, amend, or repeal regulations.

101	HRBWA	EAWs	<p>There is a lack of standards for evaluating EAW nominations. The proposed rule does not provide standards for the information needed or benchmarks for how it will be evaluated. For example, what level of information is needed for the Commission to consider the social and economic impacts of an EAW designation, and how will the Commission determine the adequacy of public outreach and communication efforts within the local community near the surface water.</p>	<p>As written, the revised proposed rule puts the burden on the nominator to identify the criteria that serve as the justification for determining whether a nominated water should be designated as an EAW. It would be up to the nominating party to provide sufficient information to address the two examples noted in the comment. If the level of information related to social and economic impacts was not sufficient, or the outreach and communication was inadequate in the Commission's view to render a decision, the petition could be denied with the aforementioned reasons provided as to why the petition was not acted upon.</p>
102	HRBWA	EAWs	<p>The EAW process lacks meaningful consultation with state agencies, local governments, and federal land managers and robust public outreach. As currently written, the proposed rule lacks standards for what is acceptable related to consultation. At a minimum, outreach and consultation with local governing bodies including, but not limited to, boards of county commissioners, city councils, regional water authorities, conservation districts, and irrigation districts should be required and documented.</p>	<p>Comment noted. The Division agrees that an EAW nomination package will need to include documentation of petitioner's public involvement activities with local government and state and federal agencies. If an EAW was to be located on federally owned lands, the expectation would be that a letter of support from the federal land management agency would need to be included in the nomination package.</p>
103	HRBWA	EAWs	<p>The proposed regulation must require an outreach plan to ensure that all potentially impacted parties have the opportunity to provide comment on a proposed EAW designation, especially residents and businesses who are most likely to be impacted by an EAW designation of a nearby surface water. Stakeholders in Nevada's rural areas must be provided notification and reasonable opportunities to participate in the designation process.</p>	<p>The Division feels that an EAW nomination will require support at a local level. Identifying this level of support prior to submitting a nomination would be important in the Division's opinion, as it would provide an indication to the nominating party of the effort that will be required to attempt to classify the water as an EAW.</p>
104	HRBWA	EAWs	<p>HRBWA is concerned about the impacts of an EAW designation on the use of federal and private lands including historic irrigation practices, agricultural activities (including grazing), exploration and mining. The proposed regulation seeks to provide assurance that existing land use will be allowed to continue, however, there is no mention of how the expansion of existing uses and future land uses would be impacted. Designation of an EAW on federal managed land could impact future land uses as well as existing land uses such as livestock grazing when federal permits are being renewed.</p>	<p>The proposed rule requires that the compatibility of a nominated EAW with preexisting and preauthorized land use activities be demonstrated. As part of this demonstration, the expansion of these preexisting and preauthorized land use activities would be evaluated. If a waterbody is determined to warrant protection as an EAW, the decision is being made that the designation will provide protection against new or increased sources of pollution in the future. If an EAW was to be located on federally owned lands, the expectation would be that a letter of support from the federal land management agency would need to be included in the nomination package.</p>
105	HRBWA	EAWs	<p>Certain water rights issues still need to be resolved including the interactions between an EAW and water allocation. How will minimum flows in rivers and streams be addressed, particularly in ecological and aesthetically designated waterbodies?</p>	<p>State law (NRS 445A.725) explicitly provides that water quality protections cannot and do not take away or modify water rights or water appropriations.</p>

106	HRBWA	EAWs	The definition of "Waters of the United States" (WOTUS) under the Clean Water Act is in flux and new regulations are currently being considered by EPA. New regulations could have a significant bearing on the scope and application of NDEP's proposed regulations.	Nevada state statute NRS 445A.565 requires that surface waters of Nevada not be degraded. The WOTUS rule is irrelevant for the concept of antidegradation. It makes sense to adopt one process to cover both state and federal statute.
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Definitions

"Parameter of concern" means a parameter with a water quality standard set forth in NAC 445A.11704 to 445A.2234, inclusive, when determined by the Department to be of concern in the receiving water

"Effluent-dominated water" means a water whose flow consists of greater than 80 percent wastewater effluent for at least 300 days annually

"A requirement to maintain existing higher quality" (RMHQ) means the 95th% value of a parameter that reflects a level of significantly better water quality than the value of the beneficial use standard for that parameter in the receiving water, as determined by a minimum of twenty samples collected on a quarterly basis over five years.

"Significantly better quality" means, on a parameter-by-parameter basis, that the existing level of water quality for a parameter is at least 25% better than the most-restrictive beneficial use standard for that parameter in the receiving water

"Baseline concentration" means the existing level of water quality for each parameter in the receiving water, as calculated as the 95th% using twenty quarterly samples.