



Mr. Dave Simpson
Nevada Division of Environmental Protection
Bureau of Water Quality Planning
901 S Stewart Street
Carson City, Nevada 89701

Re: NDEP's Proposed Antidegradation Regulations, Petition R-119-20

Dear Mr. Simpson:

Thank you for the opportunity to comment on the Proposed Antidegradation Regulations (R-119-20). These comments are submitted on behalf of the City of Reno, City of Sparks, Washoe County, and Truckee Meadows Water Authority. Collectively these public entities manage the region's water resources, supply clean drinking water to over 440,000 people, and treat and discharge wastewater. We support protecting Nevada's waterways for all beneficial uses and appreciate the Nevada Division of Environmental Protection's ("NDEP") leadership in developing these regulations.

We appreciate the time and resources NDEP has utilized to conduct workshops and address questions stakeholders have proposed regarding the proposed regulations. We strongly support a high level of water quality for Nevada's waterbodies and believe it is important to protect and maintain water quality. However, as agencies that provide drinking water and treat wastewater within the Truckee Meadows, we still have some concerns about the complexity and intent of the regulations.

Ecological and Aesthetic Waters (EAW)

The proposed regulations relating to EAW designation remain problematic. As described below, the regulation is drafted broadly and without the necessary specificity to guide individuals as to what waters are truly meant to be protected as "extraordinary." As drafted in section 1 (a)-(c) the categories are so broad that almost any waterbody could be nominated. At a minimum, NDEP should create a list of priority water bodies for nomination in Nevada based on specific criteria. Other states, such as Oregon, describe which areas are targeted to be designated "Outstanding Resource Waters." Oregon's priorities include those in State and National Parks, National Wild and Scenic Rivers, State Scenic Waterways, those in State and National Wildlife Refuges, and those in federally designated wilderness. A similar strategy would be useful in Nevada to help guide future nominators to the intent of EAW designations. Providing a scope like this would also help to reduce the number of nominations received.

The proposed regulation allows for an individual or an organization to submit a petition for an EAW through NDEP or to the State Environmental Commission ("SEC"). If submitting through

NDEP, the Department is required to work with the petitioner to prepare the petition to the SEC. However, the burden to provide adequate information to nominate an EAW should fall upon the nominator. Section 2, Subsection 3(a) states that, “The person shall work with the Department to gather the following information in support of the nomination...”. This implies that the nominator and NDEP may work together to collect the necessary information for a nomination application. The process would tax NDEP’s already limited resources. Many other states with similar regulations require the nominator to provide the entire application package without assistance from the state agencies (e.g., Montana, Arizona, New Mexico). As another example, Idaho only allows designation to occur through the legislature. These procedures are likely included to address the additional demand on limited state resources. Similar procedures or leaving the existing application process in place would help reduce the potential impact to NDEP resources.

Since, the SEC doesn’t have the technical resources and must rely on NDEP technical work to evaluate a petition. As drafted the regulation presents a role conflict for NDEP as on one hand it is drafting the petition, and at the same time evaluating the petition and making a recommendation to the SEC. To address this concern, the proposed regulation should place the burden of preparing and filing the petition solely on the nominator, without NDEP assistance. Furthermore, it is not necessary for multiple options to process an application. The application should just go to the SEC.

The specific data requirements necessary for an EAW nomination, particularly regarding water quality, need to be clearly outlined in the regulations. Section 2, Subsection 3(a)(4) states, “Evidence and water chemistry data that supports the nomination and demonstrates that the water quality is higher than applicable standard for water quality...”. The regulations should indicate how many samples, for what time period, and at what interval water quality data is needed to prove “higher quality.” It should also specify what is credible evidence to support the petition.

Finally, as it relates to the EAW, there are remaining questions that should be addressed. What is the public notice, comment, and engagement process for an EAW petition? Can additional data be provided by the public? If a water body is nominated and ultimately not granted EAW status, what are the criteria before it can be re-nominated?

Anti-Degradation

As drafted the measurement location for determining anti-degradation water quality review is not specified. In Section 8, Subsection 1(c), the regulations indicate that the water quality will be determined based on the baseline water quality of the receiving water at the “location of discharge.” If an existing discharger needs to expand its point source discharge, and the water quality chemistry downstream has been significantly altered from the upstream conditions, it is unclear whether the “receiving water” water quality will be determined upstream or downstream of the point source discharge. During the discussion of this issue at the workshop, staff relied on NRS section 445A.565 to support a statement that “no change” would be allowed. Although NRS 445A.565 was adopted in 1979, it doesn’t appear that NDEP has ever interpreted this

statute in this manner. If NDEP intends to apply the statute with this strict interpretation, it would be a shift in the status quo and could prevent future economic development and growth.

There is a lack of clarity about whether pollutant load or concentration is being considered during the anti-degradation review. Section 7 states that anti-degradation review will be triggered when a permit renewal or modification will cause an “increase of the maximum flow limit in gallons per day of the discharge authorized by the permit...”. However, if the pollutant composition of the discharge will not be changing, it seems as though an anti-degradation review should not be required since water quality criterion for each parameter are established through concentration-based effluent limitations, not though load-based limitations. Wastewater treatment plants have no control flow increases. Because this strict interpretation is new, NDEP should evaluate impacts and costs to wastewater treatment plants. More work to understand the unintended consequences, including increases to ratepayers should be done prior to adopting these new regulations.

City of Reno, City of Sparks, Washoe County, and Truckee Meadows Water Authority thank you for considering our comments. We also appreciate NDEP’s efforts to work through these proposed regulations. We believe there is still more refining to avoid unintended consequences that will impact our community and NDEP’s workload. We understand that NDEP is contemplating bringing these draft regulations to the SEC in June, respectfully we believe there is more work to do with stakeholders that will reach beyond June. We are happy to continue working with NDEP to refine these draft regulations to protect Nevada’s water.

Sincerely,



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TMWRF, Treatment Plant Manager



John Enloe
TMWA, Director of Natural Resources



John Flansberg
City of Reno, Director of Public Works
Department



Dwayne Smith
Washoe County, Director Engineering and
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