



State of Nevada

Dept. of Conservation & Natural Resources

State Environmental Commission SEC.nv.gov

901 South Stewart Street, Suite 4001, Carson City, Nevada 89701

Summary Minutes of the
STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of December 4, 2013 10:00 AM

Bryan Building Carson City
901 South Stewart Street
Carson City, NV

Members Present:

E. Jim Gans, Chairman
Pete Anderson
Tom Porta
Cary Richardson
Mark Turner
Tony Wasley
Jason King
Rich Perry

Members Absent:

Frances Barron
Jim Barbee
Kathryn Landreth

SEC Staff Present:

Rose Marie Reynolds, SEC/DAG
Valerie King, Executive Secretary
Misti Gower, Recording Secretary

BEGIN SUMMARY MINUTES

The meeting was called to order at 10:15 am by Chairman Jim Gans who confirmed the hearing was properly noticed and that there was a quorum present. Chairman Gans also welcomed Rich Perry to the SEC. Commissioner Perry is the new Administrator for the Division of Minerals.

1) Public Comments (Discussion): Chairman Gans called for public comment. Allen Biaggi, representing the Nevada Mining Association, came forth to address the Commission. Mr. Biaggi recognized that item 5 would be pulled from the agenda but wanted the Commission to know that NMA believed the regulation was elegantly prepared by NDEP and extremely consistent with statutory requirement AB346 of the 2013 Nevada Legislation. NMA would be working with NDEP and hoped to bring this item in front of the Commission at the next SEC meeting.

2) Approval of Agenda (Action Item): Chairman Gans asked if there were any changes or comments regarding the agenda. Executive Secretary, Valerie King, informed the Commission that item 5, a regulatory petition from the Bureau of Mining Regulation & Reclamation and items 7 and 8, regulatory petitions from the Bureau of Waste Management had been pulled from the agenda.

Commissioner Turner moved to approve the agenda and Commissioner Porta seconded; the agenda was approved with changes.

Chairman Gans asked Dr. Colleen Cripps, Administrator of NDEP, if she would like to add anything to Mr. Biaggi's comments regarding Agenda Item 5. Dr. Cripps explained NDEP has been working with the Legislative Council Bureau (LCB) on the language. LCB recently expressed there was question about the legislative intent and how the drafted regulation comported with that. NDEP's intent is to bring it back to the Commission.

3) Approval of the minutes for the October 9, 2013 SEC meetings (Action Item): Chairman Gans requested comments from the Commission on the October meeting minutes. Commissioner Porta felt a statement he made regarding the waiver that was granted to Clark County was not clear. The state implementation plan was *not* affected by the waiver. Also his last name was misspelled in several places. Mr. Bamford, Bureau Chief for Air Pollution Control, presented a handout (**Attachment I**) to the Commission with corrections he felt should be made to the minutes.

Commissioner Anderson moved to approve the minutes as amended and Commissioner Turner seconded; motion passed with Commissioner Perry abstaining.

4) Penalty Assessments for Air Quality Violations - (Action Item): Mr. Rob Bamford, Bureau Chief for Air Pollution, and Mr. Francisco Vega presented the violations to the Commission.

A. NV Energy, Reid Gardner Generating Station — NOAV No. 2452, alleged failure to comply with a permitted emission limit during a compliance source test. The Recommended penalty amount is \$11,255.00.

B. El Sueno Resort and Casino - NOAV No. 2165, alleged failure to apply for and obtain an Air Quality Operating Permit. The Recommended penalty amount is \$1,450.00.

C. Galtar LLC - NOAV No. 2141, alleged failure to apply for and obtain an Air Quality Operating Permit. The Recommended penalty amount is \$10,500.00

NV Energy: Mr. Bamford informed the Commission that a representative from NV Energy, Starla Lacy, had planned to attend the meeting but the weather prevented it. However she had sent a letter to the Commission. (**Attachment II**) Mr. Bamford explained that NV Energy had self-reported the emission limit during the test in accordance with the NAC. After a self-shutdown and maintenance review, NV Energy retested the unit and demonstrated compliance. Even though the stack failed its test, it never exceeded the public health standard.

Motion: Commissioner King moved to accept NDEP's recommended fine of \$11,255.00 for Air Quality Violation No. 2452. Commissioner Porta seconded the motion and it passed unanimously.

El Sueno Resort and Casino: NOAV No. 2454 was issued for failure to apply for an Air Quality Operating Permit. It was discovered by an enforcement office that over five acres of land had been disturbed. The company did apply for a permit but NDEP understands that the casino is no longer being built. This is a legacy appeal the SEC dismissed during its last meeting and NDEP is required to pursue the penalty to fulfill the statutory and regulatory requirements.

Motion: Commissioner Porta moved to approve the recommended fine of \$1,450.00 for Air Quality Violation No. 2165. Commissioner Turner seconded the motion and it passed unanimously.

Galtar LLC: This is also a legacy appeal. Galtar LLC was a mine and mill project. The company disturbed over five acres of land without a permit. During the penalty conference it was discovered they had actually disturbed over 200 acres. NOAV No. 2141 was issued. To the best of NDEP's knowledge, Galtar LLC is dissolved but, again, NDEP is required to pursue the penalty.

Motion: Commissioner King made a motion to accept the penalty of \$10,500.00 for Air Quality Violation No. 2141, Commissioner Anderson seconded the motion and it passed unanimously.

6) R093-13 Standards for Water Quality: (Action Item) Kathy Sertic, Bureau Chief for Water Quality Planning, and John Heggeness presented the regulation change to the Commission. The proposed changes to NAC 445A would remove the State's water quality standards from water bodies or portions of water bodies on Federal Indian Reservations. Mr. Heggeness gave a handout to the Commissioners ([Attachment III](#)) and explained that NDEP began removing the state water quality standards from Reservation water bodies in 2008. NDEP has decided at this time to address all remaining waters on reservation lands.

Mr. Heggeness explained that when Nevada water quality standards were established, they included waters within Federal Indian Reservations. In 1987, section 518e was added to the Clean Water Act, which treats federally recognized Indian Tribes in a similar manner as states for certain provisions of the Act. Nevada water quality standards are not applicable to Federal Indian Reservations. This regulation change will bring the state regulation in alignment with the Federal regulation.

After some discussion, Chairman Gans asked if there was any public comment on this matter. Paul Bottari, from Wells, Nevada came forward. Mr. Bottari submitted comments to the Commission ([Attachment IV](#)). Mr. Bottari expressed his concern for Nevada's waters falling under EPA's control. EPA has authority over navigable waters but not all waters in Nevada are navigable. Mr. Bottari requesting that the Commission never relinquish authority of the water that states have been given authority and ownership of.

Commissioner Porta agreed with Mr. Bottari, asking the Division for clarification. Ms. Sertic assured the Commission that the waters in question have Federal jurisdiction, there is nexus to navigable waters.

Motion: Commissioner Porta moved to adopt regulation R093-13. Commissioner King seconded the motion and it passed with Commissioner Richardson voting-nay.

9) R041-13 – Air Quality, Adoption by Reference of Certain Federal Regulations: (Action Item) Jasmine Mehta presented both R041-13 and R042-13 to the Commission, explaining that these were the same regulatory petitions presented at the October SEC Hearing. Because of some confusion the regulations were not properly posted in the newspaper. The regulations now meet all posting requirements.

Motion: Commissioner Richardson moved to adopt regulation RO41-13. Commissioner Turner seconded the motion and it passed unanimously.

10.) R042-13 – Standards of Quality for Ambient Air, Prerequisites & Conditions for Operating Permits; and Compliance with Applicable State Implementation Plan: (Action Item) Again, this regulation now meets all posting requirements.

Motion: Commissioner Turner moved to adopt regulation RO42-13. Commissioner Porta seconded the motion and it passed unanimously.

11) Motion to Dismiss Appeal of Air Quality Violations: (Action Item) Deputy Attorney General Belinda Suwe presented the appeal dismissal to the Commission, explaining that an appeal must go to a hearing within one year or the SEC can dismiss the appeal. Clark & Nye County Development Corporation filed the appeal on January 12, 2004 for NOAV 1819, which was never brought to a hearing.

Motion: Commissioner Turner made a motion to dismiss the appeal, Commissioner Porta seconded the motion and it passed unanimously.

12) Hydraulic Fracturing Presentation: (Discussion) Commissioner Rich Perry, Nevada Department of Minerals Administrator, provided an overview of the hydraulic fracturing efforts in Nevada. ([Attachment V](#))

13) Election of Vice Chairman: (Action Item) Chairman Gans explained that with the retiring of Alan Coyner, the Commission needed a new vice-chairman and asked for nominations. Commissioner Anderson nominated Commissioner Porta, Commissioner Perry seconded the nomination. Commissioner Porta accepted and the nomination passed unanimously.

14) Administrator's Briefing to the Commission: (Discussion) Dr. Colleen Cripps, Administrator of NDEP, started by welcoming Commissioner Rich Perry. She thanked him for his hydraulic fracturing presentation and for putting it together so quickly after starting his new position. Dr. Cripps did not have anything to present to the Commission at this time but wanted to know if the Commissioners had any feedback regarding the information NDEP is providing for the air settlements. Also if there was anything else they would like included or changed in the hearing packets. It is NDEP's goal to make the information they provide the Commission easier and more useful. Chairman Gans said there are several things that the Commission is working on at this time including the creation of an information packet. Chairman Gans encouraged the Commissioners to let Valerie King know of any ideas or changes they might like. Commissioner Perry asked if a location map could be include with the penalty settlements to indicate the location where each violation happens.

15) Public Comment: (Discussion) Chairman Gans asked for any public comments; hearing none he asked when the next SEC meeting would be held. The next meeting will be held February 12, 2014, in the Tahoe Conference Room on the 2nd floor of the Bryan Building.

16) Adjournment: (Discussion) Meeting was adjourned at 1pm.

ATTACHMENTS

ATTACHMENT I: Corrections to minutes from Rob Bamford

ATTACHMENT II: Letter from NV Energy regarding Air Quality Violation

ATTACHMENT III: Handout for proposed revision to Nevada's Surface Water Quality Standards

ATTACHMENT IV: Paul Bottari, comments to the Commission

ATTACHMENT V: Hydraulic Fracturing Presentations

ATTACHMENT I:

Corrections to minutes from Rob Bamford

Minutes for October 9, 2013

NDEP Proposed Revisions

- Page 3, item 8, fourth paragraph reads: ***“Mr. Bamford explained that EPA views penalties as an effective way to maintain compliance and is not satisfied with Nevada’s penalties.”***

Review of Meeting Recording:

(@ ~57.0 minutes) C&E are required components of a State Implementation Plan (SIP). C&E data is reported to EPA. They evaluate number of inspections and penalty amounts. Posted online at SRF. Stack test data and other criteria. EPA has oversight role regarding our Program implementation.

(@~59.0 minutes) Penalty matrix developed by SEC and NDEP. Matrix was developed utilizing penalty values typical of surrounding western states and EPA guidance. We use the penalty matrix to be consistent and apply appropriate penalty (gravity) amount for various violations. Matrix yields values that are (hopefully) not too low or too high and could bring challenge by EPA or others. EPA has oversight, they do look at violations and penalty dollars.

(@~1:01.0 hours) Tom Porta: Where does EPA set today in regards to our penalties? When I was in C&E, they were always telling us that the penalties weren’t enough, they were too low, EPA would threaten to over-file. In some cases they did over-file.

(@~1:02:36 hours) Rob Bamford: Last year when Region 9 Administrator, Jared Blumenfeld met with NDEP, he emphasized enforcement as penalty dollars and deterrence. They advised and encouraged NDEP to do press releases for every penalty. Historically, as Tom Port referenced, EPA has challenged our program as being “good” because our penalty dollars are low. We argue with EPA that our emphasis is compliance and to be protective of health and the environment; their emphasis is dollars in the bank. We’ve been at loggerheads with them historically. They post programs’ penalties online on the SRF website for a bit of “public shaming.”

(@~1:04.00 hours) Tom Porta: So nothing has really changed with their emphasis on penalty dollars? Rob Bamford: No, and we are additionally apprehensive now that Region has created its own, new C&E branch and will be conducting its own C&E with additional oversight. That new group will be looking for “wins” and penalties to “hang their hat on.” Dollars are considered success.

(@~1:05:30 hours) Colleen Cripps: Resources are tight, and EPA is looking for the biggest bang for its buck (for penalties), and if it’s a deterrent, and they can publicize big penalties, then that’s what they like to do.

(@~1:06:33 hours) Ganse: NDEP is like a mediator between a permittee and EPA, trying to come to a balance.

Minutes for October 9, 2013

NDEP Proposed Revisions

PROPOSE: "Mr. Bamford explained that when measuring the success of a Compliance and Enforcement Program that EPA places a large emphasis on enforcement in the form of financial penalties used as punishment and deterrent. In contrast, the NDEP emphasizes compliance by working with industry to be protective of public health and the environment. As EPA chooses to measure Program success by penalty dollars, the NDEP has had to historically, and currently, advocate that it's Compliance and Enforcement program is effective even though it does not impose the same high-dollar penalties that EPA itself imposes."

➤ Page 7, item 10: "*PST.*"

PROPOSE: "PSD".

➤ Page 7, item 11: "*The first one is the table.*"

PROPOSE: "The first proposed regulation revision is to the Nevada Standards for ambient air located in the table in NAC 445B.22097. The ozone and lead standards listed under the Nevada Standards need to be aligned with the listed current Federal Standards."

ATTACHMENT II:

Letter from NV Energy regarding Air Quality Violation



December 4, 2013

Ms. Valerie King
Executive Secretary
State Environmental Commission
901 South Stewart Street
Carson City, Nevada 89701-5249
Via email: VKing@ndep.nv.gov

Re: NOAV 2452, Alleged failure to comply with a permitted emission limit during a compliance source test

Dear Ms. King:

On behalf of NV Energy, I regret that I cannot attend the State Environmental Commission (SEC) meeting today owing to weather conditions between Las Vegas and Carson City. However, I would like to present this letter informing the SEC that we do not oppose the NOAV issued by NDEP relating to a failed emission test at our Reid Gardner facility which occurred in September 2012. We note that this condition was immediately remedied upon receiving our test results and the subsequent testing indicated compliance with our permitted limit. We understand the recommended penalty amount is \$11,255.00 and we are prepared to pay this penalty after closure of today's SEC meeting.

We wish to express our appreciation to the SEC and NDEP for consistently working with its stakeholders to ensure its compliance programs are transparent and protective of the environment.

Sincerely,

A handwritten signature in cursive script that reads "Starla Lacy".

Starla Lacy
Executive
Environmental, Health and Safety

ATTACHMENT III:

Handout for proposed revision to Nevada's Surface Water
Quality Standards

**State Environmental Commission
December 04, 2013**

**Proposed Revisions to
Nevada's Surface Water
Quality Standards
NAC 445A.118 to 445A.2234**

**John Heggeness, Supervisor
Water Quality Standards Program
Bureau of Water Quality Planning
Nevada Division of Environmental Protection**

**Petition to Adjust Nevada's
Surface Water Quality Standards
Petition R 093-13 (Tab #6)**

Changes to the Nevada Administrative Code (NAC) removing waterbodies or portions of waterbodies in the NAC pertaining to State water quality standards on Federal Indian Reservations

Public Workshops

- Carson City August 19, 2013
- Las Vegas August 26, 2013
- Elko August 29, 2013

Public Comments accepted through September 18, 2013

Fact Sheets, Petitions and Rationales are available online at:
<http://ndep.nv.gov/admin/public.htm>

Background

- During the 1970's Nevada set standards on waters within several Federal Indian Reservations.
- Federal Indian policy was established in 1983 to treat Tribal governments on a government-to-government basis.
- In 1987, Section 518(e) was added to the Clean Water Act which treats federally recognized Indian Tribes in a similar manner as states for certain provisions of the Act.
- **Nevada water quality standards are not applicable to Federal Indian Reservations.**
- NDEP-BWQP proposes to remove water quality standards within the exterior borders of Federal Indian Reservations.
- Some NAC titles will be amended, Some removed.
- **No changes to Water Quality Standards are proposed.**

The following language will be added to

NAC 445A.120 Applicability. (NRS 445A.425, 445A.520)

“3. NAC 445A.11704 to 445A.2234, inclusive, do not apply to waters within the exterior borders of an Indian reservation.”

The following NACs will be amended to exclude length(s) of the waterbodies within the exterior borders of Federal Indian Reservations.

| NAC | Region | Reach Description |
|------------|---------------|---|
| 445A.1296 | Black Rock | Mahogany Creek |
| 445A.1464 | Humboldt | Humboldt River, South Fork and tributaries at Lee |
| 445A.1466 | Humboldt | Humboldt River, South Fork at the Humboldt River |
| 445A.1566 | Humboldt | Reese Creek at Indian Creek |
| 445A.1568 | Humboldt | Reese River at State Route 722 |
| 445A.1694 | Truckee | Truckee River at the Wadsworth Gage |
| 445A.1806 | Carson | Carson River, East Fork at Muller Lane |
| 445A.1812 | Carson | Carson River at Cradlebaugh Bridge |
| 445A.1836 | Carson | Clear Creek at the gaging station |
| 445A.1838 | Carson | Clear Creek at the Carson River |
| 445A.1906 | Walker | Walker River at the inlet to Weber Reservoir |
| 445A.1908 | Walker | Walker River at Schurz Bridge |
| 445A.2146 | Colorado | Colorado River below Davis Dam |

Sec. 3. NAC 445A.1296 is hereby amended to read as follows.

445A.1296 The limits of this table apply to the body of water known as Mahogany Creek from its origin to *the exterior border of the Summit Lake Indian Reservation*. Mahogany Creek is located in Humboldt County.

STANDARDS OF WATER QUALITY

Mahogany Creek

| PARAMETER | REQUIREMENTS TO MAINTAIN EXISTING HIGHER QUALITY | WATER QUALITY STANDARDS FOR BENEFICIAL USES | Beneficial Use ^a | | | | | | | | | | | | |
|-----------------------------------|--|--|-----------------------------|------------|----------|---------|------------|-----------|------------|----------|-----------|---------|-------|---|---|
| | | | Livestock | Irrigation | Aquatics | Comical | Recreation | Municipal | Industrial | Wildlife | Aesthetic | Enhance | Marsh | | |
| Beneficial Uses | | | I | X | X | X | X | X | X | X | X | X | X | X | X |
| Aquatic Life Species of Concern | | | | | | | | | | | | | | | |
| Temperature - °C ΔT - °C | | S.V. = 20 ΔT = 0 | | | • | X | | | | | | | | | |
| pH - SU | | S.V. 6.5 - 9.0 | I | X | • | • | | X | | • | | | | | |
| Total Phosphorus (as P) - mg/l | | S.V. ≤ 0.10 | | | • | • | X | X | | | | | | | |
| Dissolved Oxygen - mg/l | | S.V. ≥ 6.0 | I | | • | X | X | X | | X | | | | | |
| Total Ammonia (as N) - mg/l | | • | | | • | | | X | | | | | | | |
| Total Dissolved Solids - mg/l | | S.V. ≤ 500 or the 95th percentile (whichever is less). | I | X | | | | • | | | | | | | |
| E. coli - No./100 ml | | A.G.M. ≤ 126 S.V. ≤ 410 | | | | • | X | | | | | | | | |
| Fecal Coliform - No./100 ml | | S.V. ≤ 1,000 | I | | | | X | X | | X | | | | | |

• = The most restrictive beneficial use.

X = Beneficial use.

^a Refer to NAC 445A.122 and 445A.1227 for beneficial use terminology.

- The following NACs will be removed because they are entirely within the exterior borders of Federal Indian Reservations:

| NAC | Region | Reach Description |
|------------|---------------|-------------------------------|
| 445A.1294 | Black Rock | Summit Lake |
| 445A.16965 | Truckee | Truckee River at Pyramid Lake |
| 445A.1924 | Walker | Weber Reservoir |

Questions on Petition R 093-13?

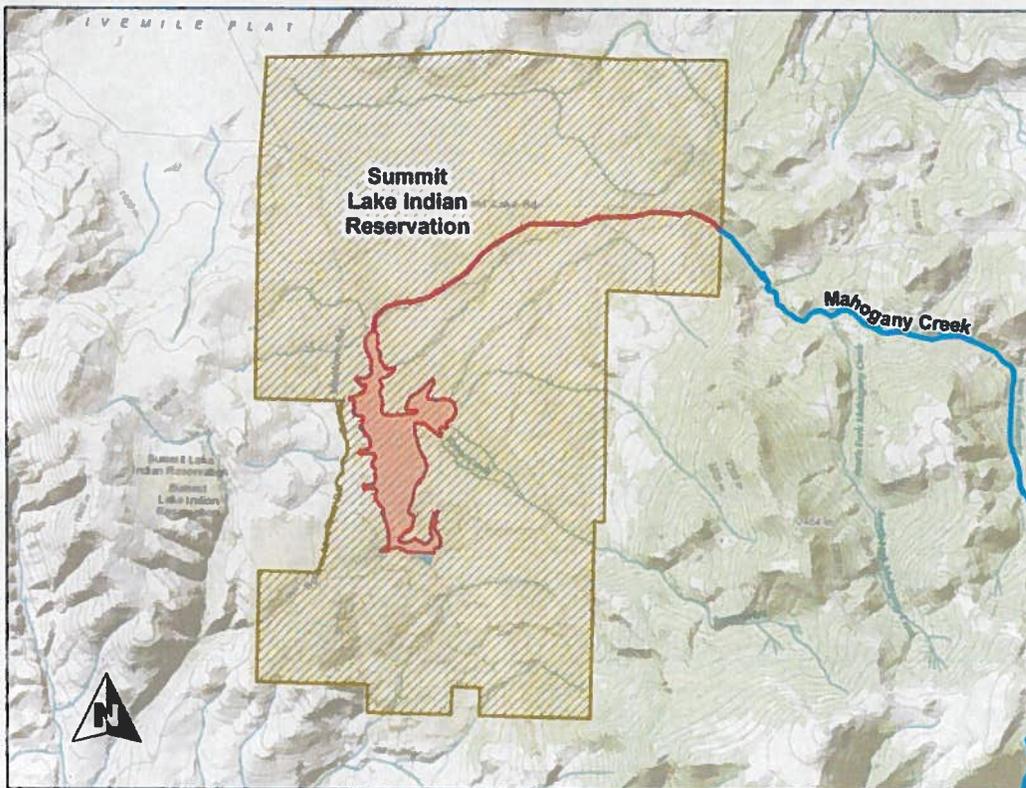


Figure 1: NAC 445A.1294 & NAC 445A.1296 - Summit Lake and Mahogany Creek and the Summit Lake Indian Reservation

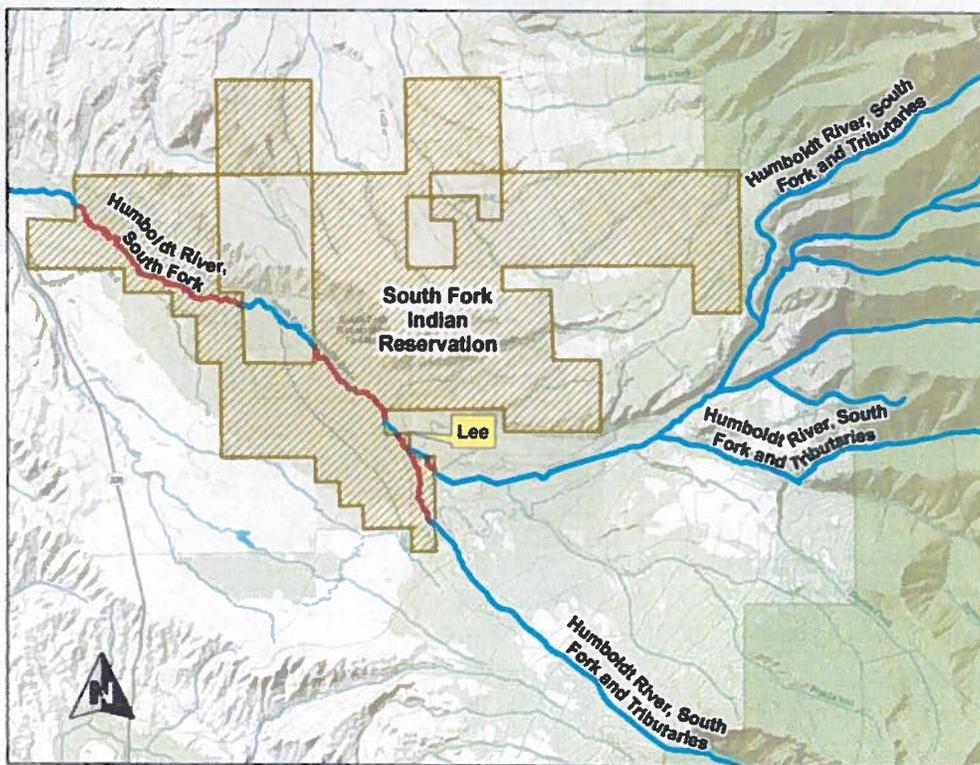


Figure 2: NAC 445A.1464 & 1466 - Humboldt River, South Fork and tributaries and the South Fork Indian Reservation

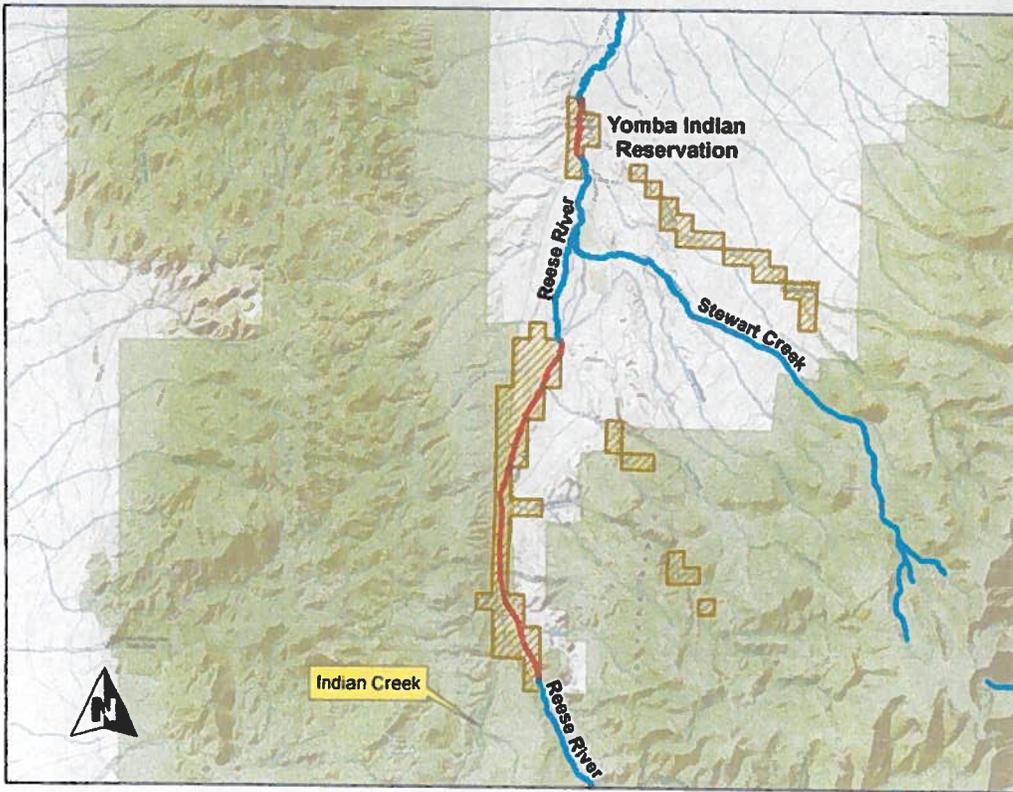


Figure 3: NAC 445A.1556 & 1558 - Reese River and the Yomba Indian Reservation

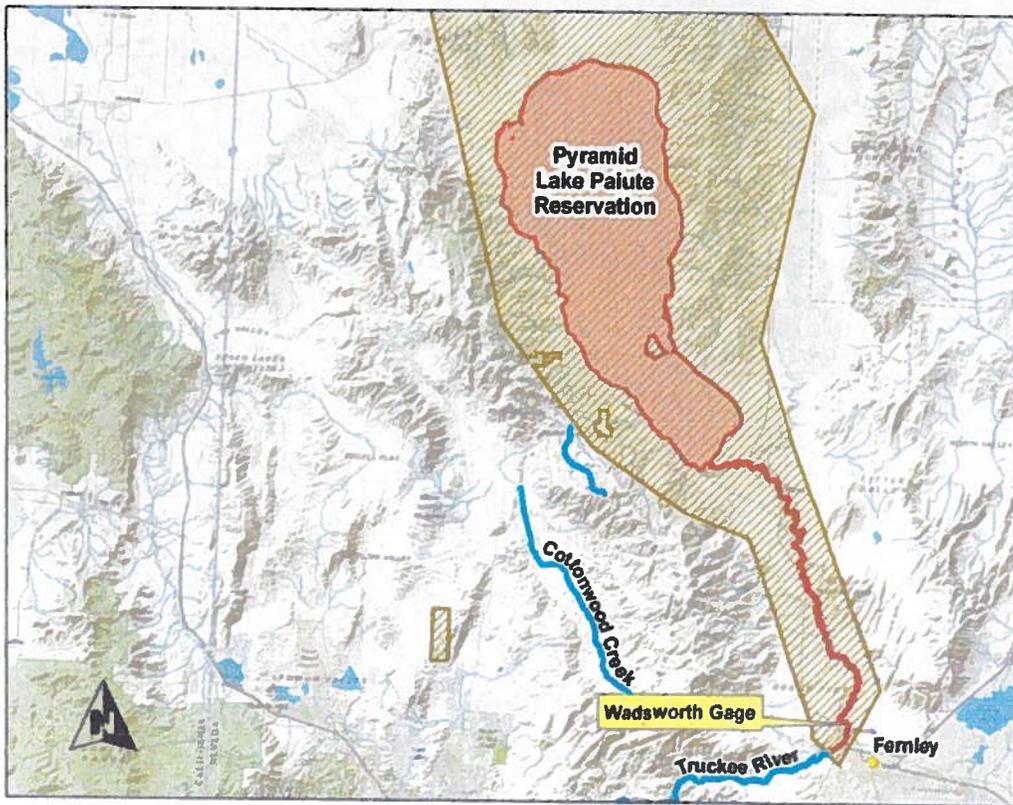


Figure 4: NAC 445A.1694 & 16965 - Truckee River and the Pyramid Lake Paiute Reservation

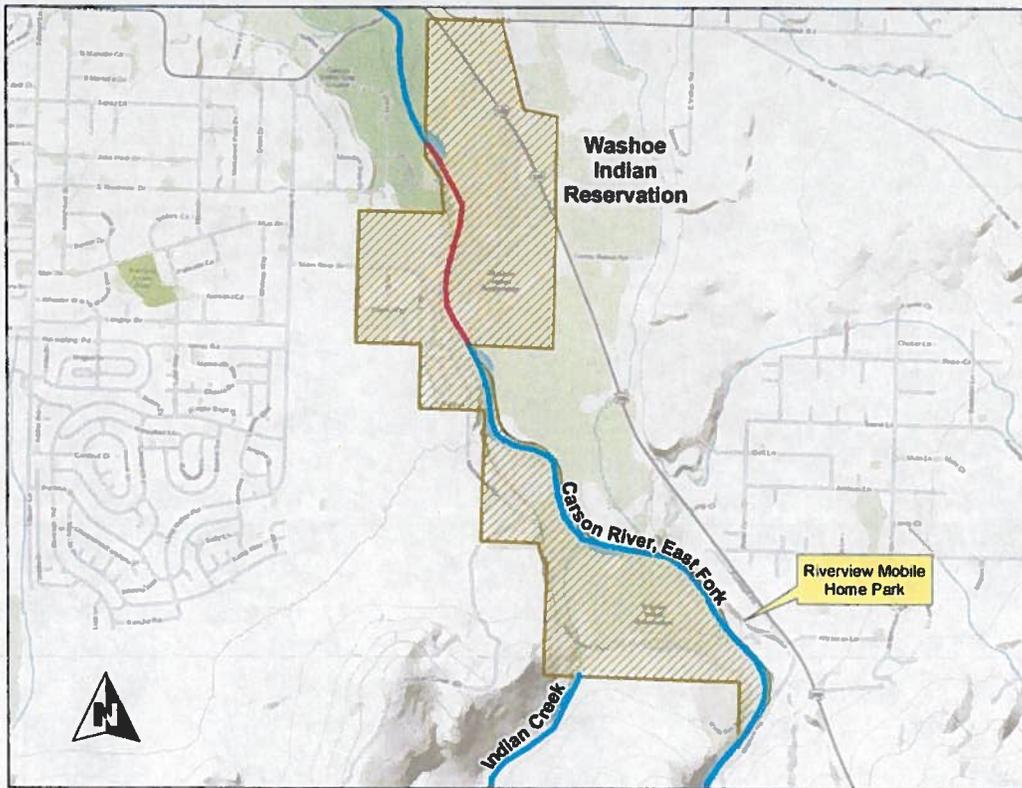


Figure 5: NAC 445A.1804 & 1806 - Carson River, East Fork and the Washoe Indian Reservation

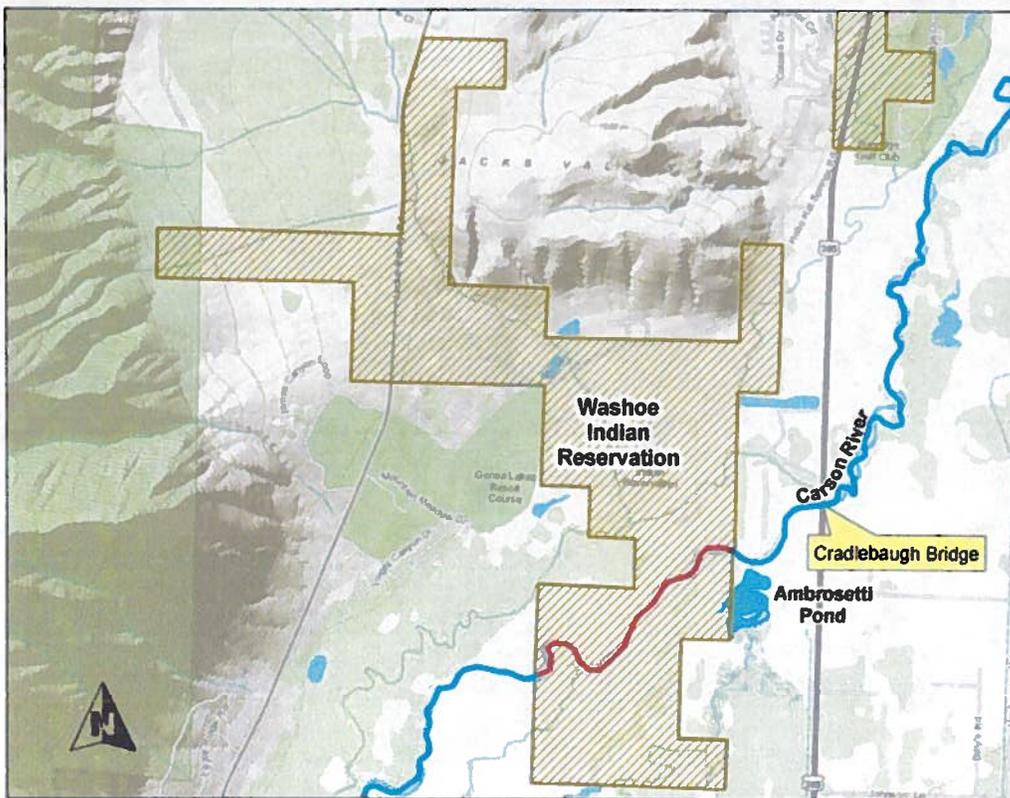


Figure 6: NAC 445A.1812 - Carson River at Cradlebaugh Bridge

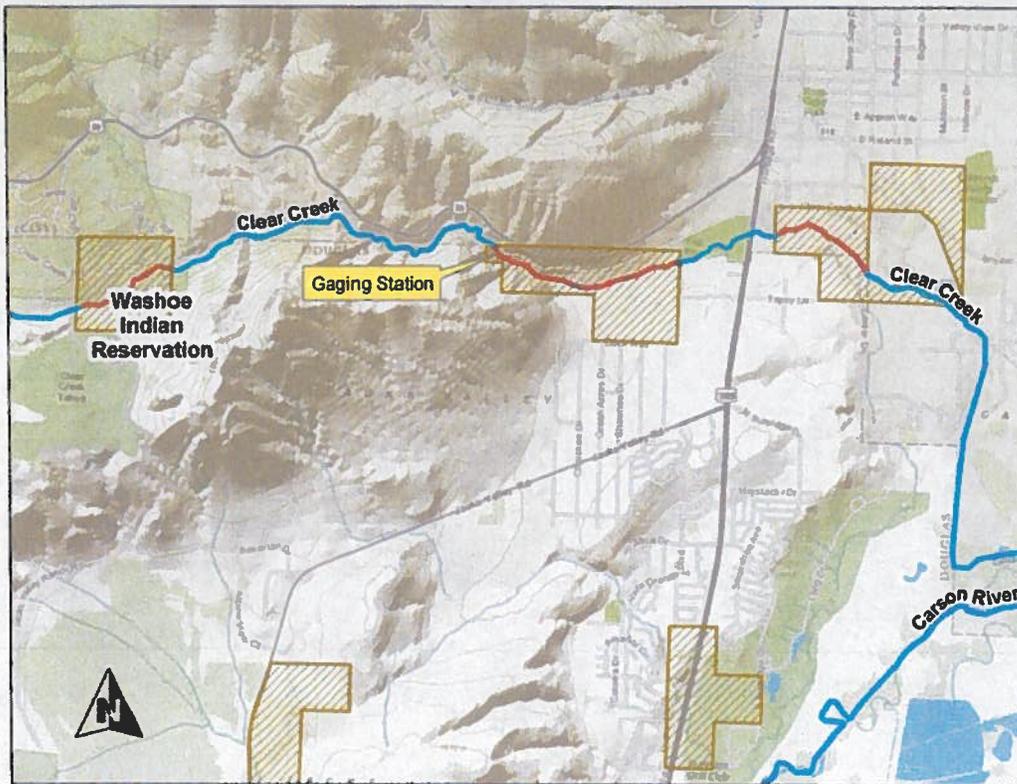


Figure 7: NAC 445A.1836 & 1838 - Clear Creek and the Washoe Indian Reservation

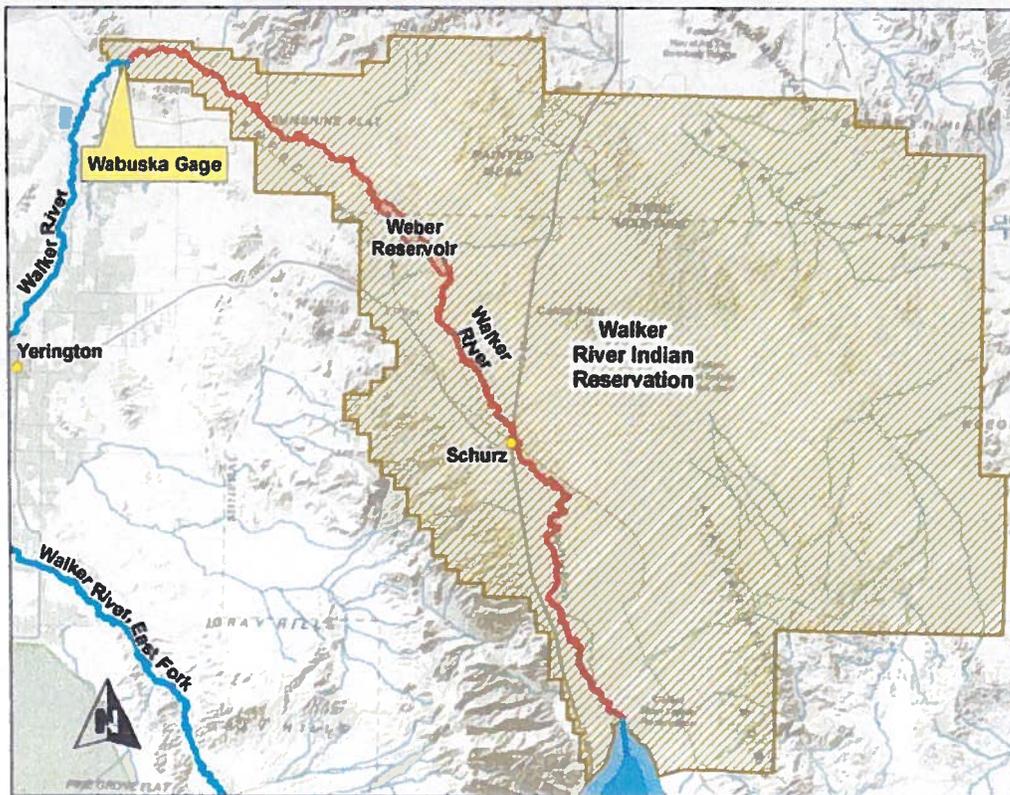


Figure 8: NAC 445A.1906, 1908, & 1924 - Walker River, Weber Reservoir, and the Walker River Indian Reservation

ATTACHMENT IV:

Paul Bottari's comments to the Commission

Ms Valarie King, Executive Secretary
Nevada Environmental Commission

RE: Comments on agenda item 6. R093-13:For the December 4, 2013 Commission Meeting for
Standards for Water Quality:

Members of the Commission :

On behalf of the Elko Co. Association of Realtor's I am offering the following comments on this proposal which, if adopted, would relinquish the State of Nevada's authority to regulate water quality on Federal Indian Reservations to the Federal Government. We totally oppose such a change for the following reasons:

1. The only authority the Federal Government has on water in Nevada is if it were authorized through the Clean Water Act (CWA). The CWA Regulates Navigable Waters, Not All Waters. The CWA regulates "navigable waters," defined as "waters of the United States." 33U.S.C. §§ 1344, 1362(7). It does not regulate all waters. The United States Supreme Court has recognized that the term "navigable" must be given effect. See *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172 (2001) ("SWANCC") ("The term 'navigable' has at least the import of showing us what Congress had in mind as its authority for enacting the CWA: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made."); *Rapanos v. United States*, 547 U.S. 715, 731 (2006) ("[T]he qualifier 'navigable' is not devoid of significance."). Indeed, Congress did not intend for the CWA to cover all waters. When it enacted the CWA, Congress explicitly "recogniz[ed], preserv[ed], and protect[ed]" the States' primary authority and responsibility over local land and water resources. 33 U.S.C. § 1251(b). Overreaching interpretations of the CWA "result in a significant impingement of the States' traditional and primary power over land and water use." *Rapanos*, 547 U.S. at 738 (quoting *SWANCC*, 531 U.S. at 174). ***There may be some tributaries of navigable waters that originate in Nevada on Federal Indian Reservations and these may give the EPA authority under the CWA however, the State should not render full authority over those waters for in fact EPA may not have authority over those waters as noted in No. 2 outlined below.***

Also:

2. **In *Rapanos*, the Court Rejected the "Any Connection" Standard, and Justice Kennedy Established a "Significant Nexus" Standard.** The U.S. Supreme Court has examined the meaning of the scope of "navigable waters" under the CWA three times. In *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985), the Supreme Court upheld the regulation of wetlands adjacent to navigable waters because it found that the adjacent wetlands were "inseparably bound up" with the navigable waters. In *SWANCC*, the Supreme Court rejected the assertion of jurisdiction over isolated ponds because they lacked a significant nexus to navigable waters and were therefore a "far cry, indeed, from the 'navigable waters' and 'waters of the United States' to which the statute by its U.S. Environmental Protection Agency Office of Environmental Information Docket terms extends." 531 U.S. at 173. The *SWANCC* Court found that isolated waters fall outside CWA jurisdiction, even when those waters have an ecological connection (via migratory birds) to navigable waters. *Id.* at 167-68. Following *SWANCC*, the government asserted that the *SWANCC* decision was limited to isolated waters, and that if a water "connected" to navigable waters, it was not an isolated water and could therefore be regulated as a navigable water under the CWA.⁶ The agencies' "any connection" theory essentially reached all wet areas, including ditches, drains, desert washes, and ephemeral waters that flow infrequently and are far removed from traditional navigable waters. This approach to jurisdiction was challenged in two consolidated cases, *Rapanos v. United States* and *Carabell v. United States*, in which the Court considered whether the agencies could assert CWA jurisdiction over sites with nearby drains and ditches based on the agencies' determination that the sites were connected to tributaries of navigable waters. 547 U.S. at 720-721. The *Rapanos* Court, in a four-Justice plurality opinion authored by Justice Scalia and a separate concurrence by Justice Kennedy, rejected the Corps's assertion of jurisdiction over the wetlands at issue and rejected the Corps's broad interpretation that the CWA regulates any nonnavigable water with "any connection" to navigable waters. *Id.* at 734 (plurality); *id.* at 781 (Kennedy, J., concurring). The plurality held that the plain language of the CWA "does not authorize this 'Land is Waters' approach to federal jurisdiction" and that "[i]n applying the definition to 'ephemeral streams,' 'wet meadows,' storm sewers and culverts, 'directional sheet flow during storm events,' drain tiles, manmade drainage ditches, and dry arroyos in the middle of the desert, the Corps has stretched the term 'waters of the United States' beyond parody." *Id.* at 734 (internal quotations omitted). Rather, the plurality held that the Act "confers jurisdiction over only relatively permanent bodies of water." *Id.* In his

concurrency, Justice Kennedy also criticized the Corps's standard as too broad because it "leave[s] wide room for regulation of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes" Id. at 781 (Kennedy, J. concurring). Justice Kennedy established a "significant nexus" standard and explained that "[a]bsent a significant nexus, jurisdiction under the Act is lacking." Id. at 767. Justice Kennedy noted that consideration of "the quantity and regularity of flow" and proximity to traditional navigable waters is important for assessing whether there is a significant nexus. Id. at 786. Following the Rapanos decision, therefore, identifying which waters have a "significant" nexus is critical.

6 See, e.g., Brief for the United States at 31, Rapanos v. United States, 547 U.S. 715 (2006) (No. 04-1034); Rapanos, 547 U.S. at 780 (Kennedy, J., concurring) ("The Corps' theory of jurisdiction in these consolidated cases—adjacency to tributaries, however remote and insubstantial—raises concerns . . .").

We formally request that the State of Nevada, through it's Agencies so authorized, never relinquish authority over the water States were give authority and ownership of. Water is the life blood of our communities and without water our economic future is greatly restricted. As long as the State of Nevada retains it's authority over it's waters we will have an opportunity to influence what happens with our state waters. Giving the Federal Government control over waters just because they are on a Federal Indian Reservation sets the stage for their claim for all waters that surface on Federally administered lands. If the Federal Government controls our waters we are a spec of sand in a Desert of people most of whom could care less about rural Nevada communities.

Sincerely,



Paul Bottari, Chairman Public Policy Committee
Elko County Assn. of Realtor's
557 W. Silver St. Suite 201B
Elko, Nevada 89801
775-738-2395

ATTACHMENT V:

Hydraulic Fracturing Presentation

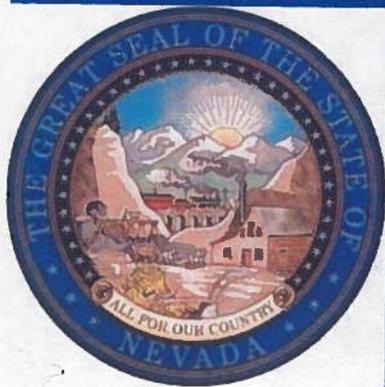
Hydraulic Fracturing Presentation

**Presentation to the State Environmental
Commission**

**December 4, 2013
Carson City, Nevada**

**Richard Perry
Administrator**

**Nevada Division of Minerals
400 W. King Street #106
Carson City, NV 89703
minerals.state.nv.us**



OUTLINE OF PRESENTATION

- Explanation of the hydraulic fracturing (HF) process

<http://www.api.org/oil-and-natural-gas-overview/exploration-and-production/hydraulic-fracturing/hydraulic-fracturing-safe-oil-natural-gas-extraction>

- Where HF is being used in US
- Oil Production & Exploration activity in Nevada
- Nevada's Oil & Gas Regulations-NAC 522
- Permits issued for drilling and HF in E. Nevada
- Preventing contamination of surface and ground water
- NRS 522.119 (*2013 Legislative session*)
- Status/schedule of development of HF Program

Status of Development of Program and Regulations – c.

- (c) Provide for notice to members of the general public concerning activities relating to hydraulic fracturing in this state
 - NDOM Website to have available to public:
 - Standard Conditions of Approval (COA)
 - Submitted Applications for Permit to drill (APD's)
 - Approved Permits with associated COA's
 - Operator's 14-day notice of intent to begin the HF process
 - Status of Operations – active or not active

SCHEDULE

- Stakeholder meeting – Nov 21, 2013
- Draft changes to NAC 522 – Dec. 2013
- Second stakeholder meeting early Jan. 2014
- CMR review and possible approval
- Submit to LCB – Jan. 2014
- Public Hearings – Mar, 2014
- Program developed on or before 7/2014
- Commission on Mineral Resources to adopt regulations to implement program by 1/1/2015

Status of Development of Program and Regulations – a.

- (a) Assess the effects of hydraulic fracturing on the waters of the State of Nevada
 - Permit application to include 1-mile radius Area of Review (AOR) – add to NAC 522
 - Groundwater baseline sampling and monitoring within one mile of proposed well by operator before and after HF – add to NAC 522
 - NDOM and NDEP coordination
 - DRI study “Aquifer quality assessment program”, funded by Noble Energy

Status of Development of Program and Regulations – b.

- (b) Require a person who engages in hydraulic fracturing to disclose each chemical used to engage in hydraulic fracturing;
 - NDOM Web site: Standard list of chemicals and maximum concentrations used in HF fluids
 - C.A.S. (chemical abstract service) required
 - 30-day approval process for changes in frac fluid chemistry
 - Operator to post information and chemicals used on a publically-available chemical disclosure registry <http://fracfocus.org>
 - *Add these requirements to NAC 522*

NRS 522.119

- NRS 522.119 Development of program; regulations.
 1. The Division of Minerals and the Division of Environmental Protection shall, jointly, develop a hydraulic fracturing program to:
 - (a) Assess the effects of hydraulic fracturing on the waters of the State of Nevada
 - (b) Require a person who engages in hydraulic fracturing to disclose each chemical used to engage in hydraulic fracturing; and
 - (c) Provide for notice to members of the general public concerning activities relating to hydraulic fracturing in this state.

NRS 522.119

2. The Commission on Mineral Resources shall adopt regulations to implement the hydraulic fracturing program required by subsection 1.

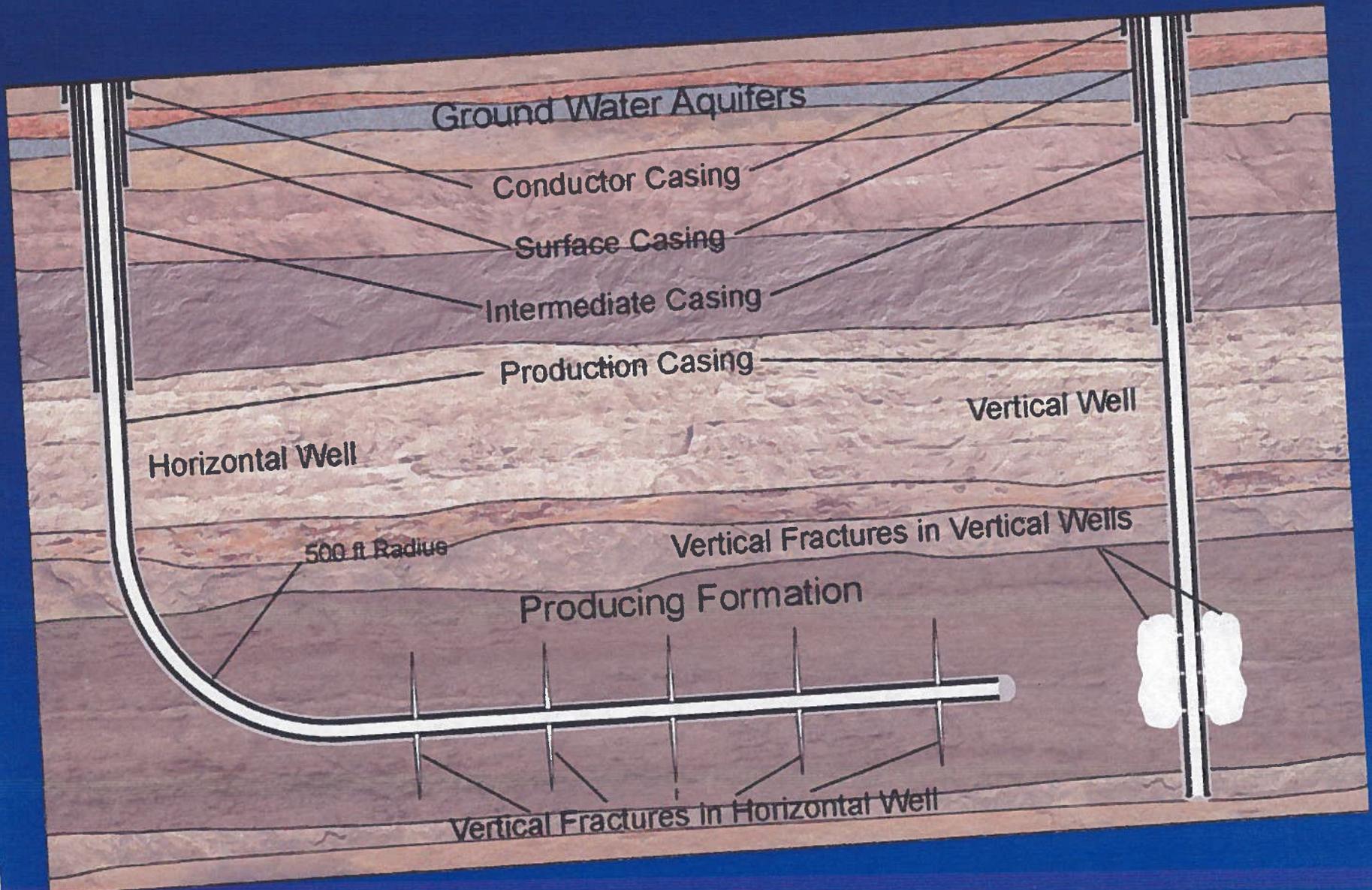
3. As used in this section:

(a) "Division of Environmental Protection" means the Division of Environmental Protection of the State Department of Conservation and Natural Resources.

(b) "Hydraulic fracturing" means the process of pumping a fluid into or under the surface of the ground to create fractures in the rock to facilitate the production or recovery of oil or gas

PREVENTING CONTAMINATION OF SURFACE AND GROUND WATER

1. Borehole Integrity
 - Casing and cement QAQC
 - Multiple casing and cement in groundwater zone
2. Handling of “flow-back” water
 - Fracturing chemicals
 - Treatment and disposal
3. Accidental spills
 - Containment
4. Volume of water used - NDWR



Ground Water Aquifers

Conductor Casing

Surface Casing

Intermediate Casing

Production Casing

Vertical Well

Horizontal Well

500 ft Radius

Vertical Fractures in Vertical Wells

Producing Formation

Vertical Fractures in Horizontal Well

Nevada's Oil & Gas Regulations: NAC 522

- Adopted in 1979, updated in '87, '92, '99
- NAC 522.185 Protection of fresh water
- Requires an application for permit to drill with details of plan.
- Requires bonding (NDOM holds if not on federal land) to ensure well is ultimately plugged.
- Daily reports to NDOM O&G program manager, all well logs and cuttings to NDOM when well completed.
- 522.400 Permit for secondary recovery operations
- Permits have conditions listed in the COA.
- We currently have one OGG Program Manager-Inspector.
- OGG Program Manager, Administrator and Deputy Administrator are involved in approving permits.

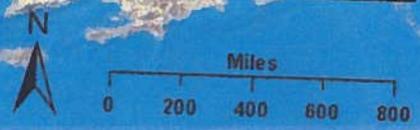


Nine new well permits and one sundry notice on an existing well have been approved by NDOM that involve hydraulic fracturing.

North American shale plays (as of May 2011)



Source: U.S. Energy Information Administration based on data from various published studies. Canada and Mexico plays from ARI.
 Updated: May 9, 2011



OIL PRODUCTION & ACTIVITY IN NEVADA

Petroleum Data Map of Nevada
 Larry J. Garside and Ronald H. Hess
 Nevada Division of Minerals Update to MDMAG Map 142
 January, 2013

Legend

Oil and Gas Wells

- Oil Well
- Gas Well
- Oil and Gas Well
- Oil Well - No Production
- Gas Well - No Production
- Oil and Gas Well - No Production
- Oil Well - No Production - No Flow
- Gas Well - No Production - No Flow
- Oil and Gas Well - No Production - No Flow

Oil and Gas Wells - 2012

- Oil Well
- Gas Well
- Oil and Gas Well
- Oil Well - No Production
- Gas Well - No Production
- Oil and Gas Well - No Production
- Oil Well - No Production - No Flow
- Gas Well - No Production - No Flow
- Oil and Gas Well - No Production - No Flow

Other Wells

- Water Well
- Geothermal Well
- Other Well

Scale

0 100 200 300 400 500 Miles

Map 142

1:50,000

Base: 1999 USGS 7.5 Minute Topographic Series

Map Courtesy: USGS

Pine Valley:
 Two oil fields produced 49,709 barrels of oil in 2012

Railroad Valley:
 Ten oil fields produced 318,285 barrels of oil in 2012

Total 2012 Nevada oil production from 71 producers:
 367,994 barrels

Noble Energy Inc.:
 ~350,000 net acres in NE Nevada
 (~66% on fee/34% on federal leases)
 Have acquired 3D seismic in all three project areas (~180 square miles)
 Currently drilling second well 25 miles east of Elko