

STATE OF NEVADA

DEPARTMENT OF CONSERVATION & NATURAL RESOURCES

STATE ENVIROMENTAL COMMISSION

In Re:

SEC Regulatory Meeting

TRANSCRIPT OF PROCEEDINGS

June 15, 2022

901 SOUTH STEWART STREET, SUITE 4001
CARSON CITY, NEVADA 89701

Transcribed by:

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WEDNESDAY, JUNE 15, 2022

TOM PORTA: Okay. Great. Well, welcome. Well, good morning, everyone. I call to order this meeting of the Nevada State Environmental Commission on June 15th at about 9:05.

And Sheryl, would you please -- or let me first ask, did notice get -- was the agenda properly noticed?

SHERYL FONTAINE: Yes.

TOM PORTA: Okay. And now, will you please call the roll?

SHERYL FONTAINE: I will. Chair Porta?

TOM PORTA: I'm here.

SHERYL FONTAINE: Jason King will not be joining us. Kathryn Landreth?

KATHRYN LANDRETH: Here.

SHERYL FONTAINE: Jocelyn Torres?

JOCELYN TORRES: Here.

SHERYL FONTAINE: Mark Turner will not be joining us. Kacey KC?

KACEY KC: Here.

SHERYL FONTAINE: Jennifer Ott?

JENNIFER OTT: Here.

SHERYL FONTAINE: Mike Visher will not be joining us. Tony Wasley? I thought Tony was online. Mr. Wasley? Oh, I muted him. My bad.

TONY WASLEY: Yeah. Thank you for unmuting me.

1 Yeah, I'm here.

2 SHERYL FONTAINE: You may speak now. Sorry. Thank
3 you. Let's see. Adam Sullivan?

4 ADAM SULLIVAN: Here.

5 SHERYL FONTAINE: And Tom Smith? He may also be
6 muted.

7 TOM PORTA: I see him waving.

8 SHERYL FONTAINE: Yeah. I can unmute people as long
9 as you all mute yourself, please. Tom Smith?

10 TOM SMITH: Yeah, Tom Smith.

11 SHERYL FONTAINE: Perfect. Thank you. And we have a
12 quorum.

13 TOM PORTA: Thank you. All right. Since we're a
14 combination of in person and virtual meeting here today, I'm
15 going to have Sheryl go over some housekeeping measures of how
16 people can participate and raise their hand and all that good
17 stuff. So Sheryl?

18 SHERYL FONTAINE: Thank you. Right. So virtual
19 meetings can be a little awkward. Hopefully, these items will
20 make the meeting go a little smoother.

21 First, if you are participating through Lifesize,
22 please mute your microphone and keep it muted for the entire
23 meeting unless you're speaking. If you're not muted on your
24 end, I can mute you on this end. But then, as you just saw,
25 it's a little strange if you want to speak and I haven't

1 unmuted you yet. If -- when you'd like to speak, there should
2 be a -- you can raise your hand. There's a little hand icon in
3 the bottom right of your screen, I believe. Click on that and
4 then I can call on you.

5 Let's see. If you've called in, please do not mute
6 the microphone on your device. Leave that unmuted and we will
7 mute you on our end. For the public comment period, again, if
8 you're using Lifesize and you'd like to comment, please raise
9 your hand. If you've called in, we will call out the last four
10 digits of your phone number and ask if you have a comment. If
11 you do not have a public comment, please say no and we will
12 move on to the next number.

13 For providing public comment, before you make your
14 comment, please state your name and who you're affiliated with
15 so that we can make sure we have a proper recording. Lastly,
16 for the commissioners, during the discussion periods, if you'd
17 like to make a statement, please also raise your hand
18 electronically and we will call on you from here. I think that
19 wraps up for housekeeping.

20 TOM PORTA: Thank you, Sheryl. I'll next ask are
21 there any changes to the agenda that we have today?

22 SHERYL FONTAINE: No.

23 TOM PORTA: Any commissioners have any changes or
24 questions regarding today's agenda?

25 Okay. Not seeing anybody. A lot of shaking heads

1 no. Good, we'll move on to Agenda Item Number 2, the public
2 comment period. This is a time for the public to provide
3 comment to the commission on items which are not on the agenda.
4 If you do have a comment versus an item that is on the agenda,
5 please wait until I call for public comment on that specific
6 agenda item.

7 But at this point in time, I'll ask for any comment
8 with regard to non-agendized items.

9 Don't see any. Sheryl, do we have anybody's hands
10 raised that's online?

11 SHERYL FONTAINE: No, there are no hands raised.

12 TOM PORTA: Okay. Very good. Moving on to Agenda
13 Item Number 3, a review and approval of the minutes. I'll ask
14 for the commissioners' comments, recommendations at this time
15 for the minutes of our last meeting, February 9th.

16 I'm not seeing any. I had one typo, I think it was.
17 Pages aren't numbered here, but it would be 1, 2, 3, 4 -- I
18 think it's on page 5. And it's at the very bottom of the page,
19 Kathryn Landreth comment. There's a parenthesis in there that
20 was inserted.

21 SHERYL FONTAINE: Yeah.

22 TOM PORTA: So I think the letter has parentheses.

23 SHERYL FONTAINE: Yep.

24 TOM PORTA: Got it?

25 SHERYL FONTAINE: I got it. Thank you.

1 TOM PORTA: Okay. Anyone else regarding the minutes,
2 corrections or additions or comment?

3 Okay. All right. Not seeing any, I'll ask for a
4 motion to approve.

5 ADAM SULLIVAN: I'll make a motion to approve the
6 minutes of the February 9, 2020, meeting, with the correction
7 noted by Chair Porta.

8 TOM PORTA: Second by anyone?

9 KATHRYN LANDRETH: I'll second it.

10 TOM PORTA: Kathryn. Okay. We've got a motion and a
11 second. Any discussion, members, for the minutes?

12 Not seeing any, I'll call for the vote. All those in
13 favor?

14 (Unanimous ayes from commissioners)

15 TOM PORTA: Okay. Motion carries. The minutes for
16 February 9th have been approved. Thank you.

17 Moving on to our first regulatory agenda item, Agenda
18 Item Number 4, Petition R033-22. And so we'll have a
19 presentation from the Division.

20 SHERYL FONTAINE: Rebecca, if you want to share your
21 screen.

22 REBECCA BODNAR: Hi. Good morning, everyone. I'm
23 Rebecca Bodnar with the Bureau of Corrective Actions. I'm
24 in -- I supervise the Superfund program along with three other
25 programs, one of which is the certification program. Along

1 with me, our chief of the Bureau of Corrective Actions is with
2 me today, too, so there might be some things with him. Oh,
3 there he is. There's Jeff. He's sharing his screen. That's
4 nice.

5 Okay. I'm going to try to share my screen. I
6 haven't used Lifesize in a while, so we will do what we can.
7 Let's see. This one. Share. And then, I will -- let's see,
8 go to that there. Is it up?

9 SHERYL FONTAINE: Yes.

10 REBECCA BODNAR: Okay. Fantastic. Thank you very
11 much for hearing my proposed regulation amendment. I
12 appreciate that a lot. I don't get to speak to you very often,
13 so it's kind of nice to be able to do that once in a while. As
14 I said, I'm Rebecca Bodnar. I supervise this program. And I
15 guess we could just kind of move forward with the presentation.

16 So I understand that, you know, NDEP is a large
17 organization. And a certification program is honestly a
18 smaller program within NDEP, so you may not be familiar with
19 what the certification program does. And so I'm going to give
20 you a short -- an overview of the certification program, who is
21 going to be -- we're changing the regulations for the Certified
22 Environmental Managers, why we're doing that now, the proposed
23 regulation change and what the focus of the regulation change
24 is, and then why we're increasing fees along with this.

25 Along with this, like I said, I don't know how

1 familiar you are with the certification program, so I've
2 included pictures. I'm a very visual person, so whenever I do
3 presentations, I try to add some visuals so that you can see
4 exactly what people do with this program. So there will be
5 pictures along with the slides that kind of give you an
6 overview of what certification Certified Environmental Managers
7 do.

8 For instance, with this slide, this was the Panaca
9 preschool, of the contractors in there performing asbestos
10 remediation. And in order to do that, they have to have CEM
11 oversight because it's a hazardous material. And this is with
12 our brownfields program, and we require a CEM certification for
13 that.

14 So I'm going to jump right in. So an overview of the
15 certification program is that to begin with, the certification
16 program was started in 1991 and is a consumer protection
17 program, to start with. The State of Nevada requires certain
18 activities, underground storage tank handling, hazardous waste
19 management, to be conducted by certified professionals. The
20 certification program evaluates and certifies professionals to
21 conduct those activities based on experience, training,
22 integrity, and competence in their fields.

23 Once certified, the general public can confidently
24 retain their services. We have a real-time list of certified
25 individuals accessible through the NDEP website. So that is a

1 real-time list because we have the database system. So as soon
2 as someone becomes certified or recertified, they -- their name
3 goes on the list. And then, when people have to hire, they can
4 go onto that list, and with the confidence that those folks
5 have their experience, training, integrity, and competence.

6 So it pertains, though -- I want to make sure it's
7 pointed out that that pertains to activities with the Bureau of
8 Corrective Action oversight. And so it may not pertain to
9 folks that are doing work with one of the other bureaus, that
10 it is specific to Bureau of Corrective Actions.

11 So the certifications that are offered through this
12 program is Environmental Manager. We have -- today -- I
13 actually called the list up this morning and there's 476
14 certified environmental managers. We have underground tank
15 handlers. Those work with our leaky underground storage tank
16 or a storage tank -- fuel storage tank program. Underground
17 storage tanks. There's 48 of those. Underground tank testers,
18 there's 28.

19 And then the ADC operator trainers, everyone that
20 pumps gas at a gas station has to be trained, has to be
21 certified. We actually train -- we certify the trainers and
22 then we make sure that the folks in Nevada have been trained by
23 a certified trainer. And there's only five of those, but
24 they're pretty large companies, and so they cover all of
25 Nevada.

1 So a certified environmental manager, in accordance
2 with 459.9704, they're certified to act as a consultant for
3 Bureau of Corrective Actions-related activities, such as
4 management of past (indiscernible), investigation of a site to
5 determine the release or potential release of a hazardous
6 substance, sampling of air, soil, surface water, ground water
7 to determine the release of a hazardous substance, response to
8 a release of a hazardous substance, the cleanup of a release of
9 a hazardous substance, or remediation of water or soil
10 contaminated by a hazardous substance.

11 As you can tell, we're very concerned with hazardous
12 substances. And that -- most importantly, that there is
13 somebody that the environmental manager is capable of dealing
14 with the response to a release or cleanup of a release of a
15 hazardous substance. So they have the knowledge and they have
16 the experience to be able to do that according -- in accordance
17 with the Nevada Code of -- Nevada Administrative Code is one of
18 the things that we test on.

19 And then, as well as that they are capable of doing
20 it in accordance with Nevada site-specific work. For instance,
21 in Nevada, you know, we have very specific geology in Nevada.
22 And so we make sure that they are competent enough to do the
23 work here in Nevada, if that makes sense.

24 So why are we doing this right now? Why are we
25 changing this? Well, in 2020, the Governor's Finance Office

1 Division of Internal Audits, they were actually auditing the
2 Petroleum Fund. The Petroleum Fund is also within the Bureau
3 of Corrective Actions. And the Petroleum Fund is -- they fall
4 under the Petroleum Fund board. Not under the SEC, but the
5 board itself.

6 And through that audit, they were auditing their
7 finances and different things, and the practices. And they
8 came across, of course, the CEMs because you have to be a CEM
9 in order to do work with the Petroleum Fund board -- or the
10 Petroleum Fund. And so when they audited the CEM program
11 underneath that, they found -- first of all wanted to state
12 that they did not identify concerns with the administration of
13 the program in accordance with the NRSRNAC.

14 So in accordance with what we're doing, you know,
15 what we have right now under State law, we are doing everything
16 in accordance with that. However, they did recommend the
17 program be strengthened in -- similar to other western states.
18 So they made several recommendations and it was just to
19 strengthen the program.

20 And so we took a hard look at the recommendations and
21 we decided that yeah, you know, maybe they're right. Maybe we
22 could do some changes to the program to make it better. And so
23 we took those recommendations and used them as an opportunity
24 to strengthen the CEM certification renewal requirements. And
25 so we decided to do that through eligibility and professional

1 development hours. Those two things.

2 And then, along with that, we'll provide CEMs
3 guidance on acceptable courses to -- for the professional
4 development hours. That was something that we did not require
5 before, was professional development hours from CEMs.

6 So strengthening requirements for initial CEM
7 certification. So we decided to retain the following
8 eligibility requirements. Right now, one of the eligibility
9 requirements are they must have a bachelor's or advanced
10 degree, they must have three years of relevant environmental
11 experience within five years preceding the application, and
12 they must pass the CEM exam.

13 We decided that making it stronger would require
14 removing the following eligibility requirements. We were
15 removing -- in the past, which would have been 1991 was when
16 this was enacted, we allowed relevant professional registration
17 or certification eligibility in lieu of a degree. You did not
18 have to have a degree in order to become a CEM. And you could
19 have a combination of education and experience to become a CEM.

20 In today's age, you know, in 2022, we decided that
21 you would need to have a degree within a field of science,
22 generally, and -- in order to become a CEM. So I do want to
23 point out, and this came up at the public meeting, that this
24 does not impact current CEMs. We have some CEMs that fell
25 under this eligibility criteria, mainly from back in the '90s.

1 So you know, they've been doing it now for 30 years. And they
2 have relevant -- more than relevant experience to continue
3 being CEMs. So this will not impact current CEMs.

4 So we also wanted to strengthen the requirements for
5 continued CEM certification. And this does, of course, affect
6 our current CEMs. We're retaining the following renewal
7 requirements. Demonstrate he or she -- sorry -- demonstrate he
8 or she continues to meet all initial qualifications. So the
9 initial qualifications, like I said, would be that they have to
10 have three years of relevant professional experience within the
11 past five years. And that's the main one that we follow.

12 And then, we add the following requirements. We will
13 require 24 professional development hours within the biannual
14 renewal period. So that was the big change that this is, the
15 24 professional development hours. And we had -- during the
16 public meeting on this, we did have a lot of discussion and
17 comment on that. And I believe that that transcript -- there's
18 kind of an overview of the transcript and maybe a full
19 transcript in your packet on the 24 professional development
20 hours part of it. And we'll kind of -- we'll go over that a
21 little bit more.

22 So the new requirement for the 24 professional hours
23 will be prorated for the first two years -- that was also a
24 concern -- as one hour per month following the approval of the
25 code change. For instance, if Carol will recertify in

1 September of this year, she'll need to complete three
2 professional development hours. John Moore (phonetic) will
3 recertify in June of 2023. He'll need to complete 12
4 professional development hours. We try to make it as simple as
5 possible for folks.

6 Additionally, they had asked if we would provide
7 guidance. They also had a lot of comment on what they felt the
8 people on the call -- on that workshop, what they felt would be
9 appropriate for the renewals. And so hours may include
10 technical, ethical, legal, regulatory, or managerial content
11 that is relevant to the registrant's public practice as a CEM.
12 And we will be providing guidance for that. And diversified
13 types of development hours will be encouraged.

14 We also have seen the need -- and this was voiced by
15 them, as well -- that we may offer in person classes free of
16 charge in the future. So in person classes, they might
17 involve -- like I said, the original slide was on the asbestos
18 and lead abatement. Maybe it would be a class on asbestos and
19 lead abatement. Maybe it would be a class on -- like, this is
20 a tank pull. Maybe it would be a class on we -- our
21 expectations for tank pulling, that kind of stuff.

22 Okay. And then the fee increase. So since we were
23 looking at presenting to you all today, we decided that, you
24 know, maybe it would be a good time to also take a hard look at
25 our fees for the CEM, or the certification program. And our

1 fees have remained unchanged since their adoption in 1991.

2 So the fees go to program maintenance and
3 administering the exam. And we'd like to move this program
4 forward to a self-supporting program. Expenses of
5 administering the program have been supplemented through the
6 State Response grant. And so if we increase the fees, then
7 that would no longer -- it would not be supplemented through
8 the grant anymore. It would be self-supporting.

9 In 2019, we also received an approval for fees to pay
10 for personal travel expense to administer the exam in other
11 cities. Currently, we do two tests per year for the CEM exam.
12 And we administer those in Carson City. And it had been
13 brought to our attention that would be good to maybe rotate
14 that for folks. It would be rotated between Carson City, Elko,
15 and Las Vegas instead.

16 We do proctor the exam ourselves. We write the exam.
17 And we have the testing materials all here in our office. And
18 so this exam, you know, we would just be able to travel and
19 schedule this exam and make it more accessible to people. We
20 do have folks coming in from all over the country to take this
21 exam. Like I said, if you do any kind of work under BCA in the
22 State of Nevada, you have to be a CEM. And so there's folks
23 from everywhere that come in for it.

24 So the proposed increase is actually -- it's still 75
25 percent or less of the National Consumer Price Index estimated

1 change over time. I think I spell that out a little bit more
2 in your packet, what that looks like. And so I didn't want to
3 increase -- we didn't want to increase the fees too much, but
4 we wanted to do some kind of increase.

5 And then, during that public comment period, all CEMs
6 were actually in support of the fee increase and in fact, they
7 kind of laughed about it a little bit. Like, oh, yeah, we were
8 expecting it a long time ago to increase and it never has. So
9 that was, you know, actually very comforting to hear that they
10 didn't find that to be out of the ordinary at all.

11 And so the fee increase schedule, basically just
12 increasing fees \$50 for everything across the board. So those
13 are our current fees. Everything will be going up to 150, \$200
14 for the CEM exam fee. And that's it. If there are any
15 questions, I'd be happy to take those.

16 TOM PORTA: Thank you, Rebecca. Any questions from
17 the commissioners?

18 Adam, go ahead.

19 ADAM SULLIVAN: Is there an option for certified
20 environmental managers in Nevada to have some reciprocity with
21 other states that do comparable licensure and certification
22 programs?

23 REBECCA BODNAR: No, there is not. So we actually
24 took that out a few years ago, if you -- the reason we took
25 that out was because Nevada has such very distinct geology and

1 features that -- and rules and regulations from other
2 states -- that we didn't feel that somebody coming from, like,
3 Iowa or over -- especially East Coast would have an idea of how
4 our geology is over here in Nevada.

5 You know, we have the most ranges and valleys of any
6 other state, and that provides for a lot of variance in the
7 work that we do for hazardous spill release.

8 ADAM SULLIVAN: How many certified environmental
9 managers are there in Nevada?

10 REBECCA BODNAR: I don't know. Am I still sharing my
11 screen?

12 SHERYL FONTAINE: Yeah.

13 REBECCA BODNAR: Yes? Okay. So environmental
14 managers, today there's 476. We get about -- you know, every
15 year, we get about 30 new environmental managers. And then,
16 folks of course retire as well, so some drop off. But not
17 very -- not as many. Most people renew. But yeah, it's
18 about -- we -- like I said, twice a year, we test between 15 to
19 20 people twice a year. That's not a lot of people, but it's
20 enough to keep the program going.

21 ADAM SULLIVAN: And the last thought that I have is
22 with regard to the 24 hours of continuing education, do you
23 anticipate that most of the CEMs would -- or would they be able
24 to, say, attend a conference or attend a training that wasn't
25 offered through NDEP and get credit for that? And if that were

1 the case, would it -- would there be -- how do you anticipate
2 the internal review process to accept those as professional
3 development hours?

4 REBECCA BODNAR: That's a good question. Thank you.
5 You know, we do evaluate in our -- and one of the other
6 programs, I think, is the underground storage tank handler or
7 the tank handlers. They have to do some kind of training now
8 regarding -- usually it's a HAZWOPER training, you know, their
9 hazardous materials training. But they can do it in other
10 forms and we evaluate that based on individuals that submit
11 their applications to us.

12 I can foresee that being similar to this. We will be
13 putting out a list of trainings that we recommend. I've
14 already actually had people call and ask, you know,
15 if -- first, does it have hazardous -- you know, the HAZWOPER
16 is -- will work for that. It's eight hours per, you know, per
17 year as it is. And I'm like, yeah. Well, we of course accept
18 that.

19 But as far as other -- it'll be a case-to-case basis
20 whether or not it's acceptable or not. I think it'll be pretty
21 basic, like I said, based on that criteria I listed off in one
22 of my slides. Is it this one? Nope. Yeah, I don't remember
23 where it went to. Anyways, you know, based on if it's relevant
24 to Nevada, if it's relevant to, you know, development as a CEM.
25 And I think that that would be the best way to evaluate it.

1 And we work with -- we, you know, we are really good
2 to work with our CEMs and they know that we're always available
3 and to call them. Jeff was going to say something.

4 JEFF COLLINS: Yeah. Thanks, Rebecca. Jeff Collins
5 with Bureau of Corrective Action. I just wanted to kind of
6 follow up with that question. And it's a good one because I
7 think everybody needs to understand we're going to continue to
8 develop our website and our -- specifically, our web page for
9 the certification program and make sure that we make that
10 robust enough so people can understand the different
11 conferences they can go to. Because a lot of the conferences
12 I've been to, you can do breakout sessions to get continuing
13 education units for a lot of these conferences, symposiums,
14 things that you go to.

15 We're not going to be able to cover them all, but we
16 took a look at the State of Colorado's web page. They have a
17 similar setup where they do continuing education units, and
18 there's a huge list to draw from. And I think we're not going
19 to try to necessarily reinvent the wheel here, but we're going
20 to try to use some of what they've developed because those
21 training sessions and those conferences, they're -- they
22 completely apply to our program as well.

23 And whether you're in New York and you're going to a
24 conference there on brownfields or you're going to a conference
25 on different types of remediation options, I think all those

1 apply. And we're going to try to get as many of those so when
2 a certified individual goes to our web page, they'll be able to
3 see at least enough conferences, symposiums that they can go
4 to. They may have to reach out to us at a certain point and
5 say, I'm going to this conference, it has the option for
6 continuing education units, could these apply? So we're going
7 to ask for a lot of that involvement from CEMs, as well. So
8 hopefully that helps a little bit.

9 ADAM SULLIVAN: Yes. Thank you.

10 TOM PORTA: Other questions from the commissioners?
11 Are they raising their hand, Sheryl? No.

12 SHERYL FONTAINE: Yes, there's a hand raised.
13 Jocelyn.

14 JOCELYN TORRES: Thank you. I have my hand raised.
15 Yeah. This is all -- I just have one clarifying question
16 under, what is it, 3A, a bachelor's or an advanced degree,
17 whether a trade school would count as an advanced degree? Are
18 there trade schools that would count towards this program?

19 REBECCA BODNAR: Generally no. It is a four-year
20 degree, so a bachelor's or an advanced would mean a bachelor's.
21 Advanced degree would be like a master's or a Ph.D. So that's
22 kind of what we're looking at, more for anything else. On the
23 NAC, I could -- I'd have to pull that up. It goes into a more
24 thorough explanation, exactly what that -- what those degrees
25 are.

1 JOCELYN TORRES: Okay. Thank you.

2 REBECCA BODNAR: Within the NAC as it is, yeah.

3 TOM PORTA: Other questions from the commissioners?

4 SHERYL FONTAINE: Jeff Collins has his hand raised.

5 TOM PORTA: Okay. Go ahead, Jeff.

6 JEFF COLLINS: I just -- I've got the NAC here. So
7 that's a good question, Jocelyn. I don't want to discount, you
8 know, the -- that type of education. But I think what we're
9 looking for here is a four-year degree, typically -- and what
10 it says in NAC is, you know, environmental science,
11 engineering, geology, hydrogeology, biology, toxicology. So a
12 lot of the ologies. Chemistry.

13 But that is a really good question. I think we would
14 have to take a look at it. But I don't know of any trade
15 schools that would give us the comfort level that they've
16 received the coursework, I think, that we need to help them be
17 a successful CEM in Nevada.

18 You know, we're also talking about tank handlers,
19 tank testers. Those are more of the trades that you're
20 probably thinking about. Those folks may have, you know, got
21 their experience through the trades. They're able, because of
22 their experience, to pass a test that's recognized nationwide.
23 So in those instances, yes, I think trade schools would apply.
24 But I think for the certified environmental manager, we're
25 going to need more of a four-year degree or an advanced degree.

1 REBECCA BODNAR: And their requirements, too, are
2 very specific to what they're doing. We do require them, the
3 tanks that they're testing, they have to be trained on those
4 every two years. I mean, it is more rigorous than, you know,
5 than just letting -- we don't want anyone to slide by. They
6 have to. No matter how long they've been doing it, we still
7 require them to go back to school and make sure that they're
8 trained because things change every year, right?

9 And even with tank testers and tank pullers, and
10 we've seen what happens with it. And we want -- like I said,
11 it's a consumer protection program where we take that very
12 seriously, so that when someone hires them, they will do the
13 right, you know, they will do the right work.

14 TOM PORTA: Other questions from the commission? I
15 don't see any, Sheryl.

16 I have a couple, Rebecca. A little bit of follow-up
17 to Adam's question regarding CEM classes. You said you've had
18 a list available that persons can go to on the website to look
19 at. Do you feel that there's enough classes now available for
20 the current CEMs, I think some 400-plus, to meet that demand?

21 REBECCA BODNAR: Yes, I do. I think, like Jeff had
22 said, we -- you know, there's a long list of classes that are
23 offered online and training courses that are offered online.
24 And since it's, you know, it's 24 credits. But I mean, like I
25 said, most of them have to do their eight-hour HAZWOPER every

1 year. So that takes off 16 right there.

2 TOM PORTA: Okay.

3 REBECCA BODNAR: So you know, I would prefer that
4 they do more, but you know. And then, like I said, honestly,
5 the engineers already have to do this kind of training.

6 TOM PORTA: Right.

7 REBECCA BODNAR: A lot of the engineers. And so a
8 lot of those courses will be offered. They'll have it easy.

9 TOM PORTA: Okay.

10 REBECCA BODNAR: But yeah, I think there is.

11 TOM PORTA: Okay. And last question I have. You've
12 mentioned you're administering the exam and so forth. I don't
13 know if you're aware that a few years ago, we had some issues
14 with the national exam for wastewater operators. And as a
15 result of that problem we had, they made changes to the way
16 they administer the exam, the way candidates are allowed to
17 review their result afterwards.

18 Were you or anybody on the staff familiar with that
19 and have you put in precautions into place as to not have the
20 same problem we had before, which was actually somebody cheated
21 on the exam? And we just, you know, that's been kind of a
22 point where I think we want to make sure that there's no issues
23 there.

24 REBECCA BODNAR: You know, I wasn't aware of that.

25 We do -- so our exam is actually through a company. We

1 administer it. We administer it, but it's through a company.
2 And the company actually allows us to do -- we have a bank of
3 questions. So the CEM exam is always different every year --
4 or every time we give it, administer it, you know, twice a
5 year. The questions will be, you know, it's from a bank.

6 And then now, we're actually updating the software.
7 And so we'll be able to within even each exam time, we can
8 administer up to -- I think it's four exams. So we can
9 rearrange the questions and whatnot. And then, it is
10 proctored. And so someone is in the room with them at all
11 times. We do -- and we have a system in place so that they,
12 you know, to avoid anyone taking the exam for somebody else or,
13 you know, other things that might happen. Yeah.

14 And luckily, we don't have as many people taking the
15 exam as the wastewater one does. So that's beneficial. We do
16 allow people to retake, of course. And you know, which I think
17 is a reasonable thing. So I'd have to go through and see
18 exactly what you're referring to to make sure that we are
19 within that. So that's -- yeah.

20 TOM PORTA: Yeah. I would recommend that because
21 it -- the wastewater exam is also a national exam. And there
22 were some pretty glaring holes that allowed some people to, you
23 know, cheat on that exam. And they've since corrected those,
24 and I just want to make sure the Division, you know, doesn't
25 fall for the same loopholes that this went through. Because I

1 sat through two painful days of testimony on -- and will
2 remember that very well. So -- right?

3 REBECCA BODNAR: Thank you.

4 GREG LOVATO: Thanks, Tom. Greg Lovato, NDEP
5 administrator. One of the changes that came out of those two
6 days of hearings that the environmental commission sat through,
7 or at least a subset, was the regulations for all our
8 certification programs, including drinking water operators,
9 wastewater operators, and certification of individuals, the
10 process for investigating as well as affording, you know, kind
11 of a consistent due process, those regulations were revised.

12 You know, I think the -- by and large, we do have,
13 you know, challenges that can occur with any individual. But
14 we do have best practices, as Rebecca had mentioned, in terms
15 of, you know, having all the instances proctored and, you know,
16 things tracked. But I think we also have a strengthened
17 program that's more consistent for investigating and hearing,
18 you know, and investigating what's going on with any potential
19 fraud as well, now.

20 TOM PORTA: All right. Good. Glad.

21 GREG LOVATO: Yeah.

22 TOM PORTA: Glad to hear that because it was
23 something that could have been avoided at the first. So I'm
24 glad those loopholes have been closed.

25 GREG LOVATO: Right.

1 TOM PORTA: Okay. Very good.

2 SHERYL FONTAINE: Jeff --

3 TOM PORTA: Yes?

4 SHERYL FONTAINE: Jeff Collins had his hand raised.
5 Jeff, did you want to say anything?

6 JEFF COLLINS: Thank you, Sheryl. I started to, but
7 Greg mentioned that, kind of what I wanted to mention, some of
8 the regulations that we worked on with Jennifer Carr that came
9 out of that issue that Chairman's just talking about. But no,
10 I didn't have anything more than what Greg provided, so thank
11 you.

12 TOM PORTA: Do we have any other questions from the
13 commissioners before I open it up to public comment?

14 No. Not seeing any? No, Sheryl? Okay. I'll now
15 open it up to public comment for this agenda item. Any member
16 of the public like to speak, please do so at this time. If
17 your online, raise your hand and Sheryl will let you in.

18 SHERYL FONTAINE: No hands raised.

19 TOM PORTA: No hands raised. Okay. Very good. All
20 right. I will bring it back to the commission for discussion
21 on this proposed regulation, R033-22. Members of the
22 commission, any questions or concerns before we move forward?

23 KATHRYN LANDRETH: Mr. Chairman, I would just say that
24 I think these are really -- they seem like very good ways of
25 strengthening the certification process.

1 TOM PORTA: Very good. All right. Seeing no further
2 comments or concerns from the commission, I'll entertain a
3 motion.

4 KATHRYN LANDRETH: Mr. Chairman, I would move to adopt
5 or approve LCD File Number R033-22.

6 TOM PORTA: Okay. Thank you. I have a motion. Is
7 there a second?

8 TOM SMITH: I'll second. Tom Smith, second.

9 TOM PORTA: All right. The motion has been moved and
10 seconded. Any discussion before we vote?

11 All right. I'll call for the vote. All
12 commissioners in favor, please say aye.

13 (Unanimous ayes from commissioners)

14 TOM PORTA: Any opposed? The motion carries.

15 REBECCA BODNAR: Thank you, Commissioners. I
16 appreciate it.

17 TOM PORTA: Thank you. Moving on to Agenda Item
18 Number 5, Regulatory Petition R038-22. Mr. Dragoni, welcome.

19 DANILO DRAGONI: Thank you. Good morning, Mr.
20 Chairman, and good morning, members of the commission. My name
21 is Danilo Dragoni. I'm the chief of the Bureau for Air Quality
22 Planning. And with me today is Mr. Andrew Tucker. You might
23 remember Mr. Tucker in his role as enforcement supervisor. I'm
24 very happy to announce that Mr. Tucker took the new role as a
25 supervisor for planning branch. So more regulation and less

1 penalty in his future.

2 So this regulatory change that we are proposing today
3 is to adopt by reference certain federal regulations. And it's
4 something that we do on regular basis, usually once every two
5 years or years and a half. And the purpose is to align our
6 State regulations with federal regulations that deal with
7 stationary sources that meet the criteria to comply with EPA's
8 new source performance standards, or NSPS, and the EPA National
9 Emission Standards for Hazardous Air Pollutant, or NESHAP.

10 By adopting these federal regulations, NDEP can then
11 ask EPA delegation for compliance and enforcement of these
12 rules in Nevada so that the industry has to deal with us
13 instead of directly with EPA. I would like to point out that
14 these regulations are already in effect. So our industry has
15 to meet these standards already. These regulatory amendments,
16 again, will ensure that NDEP will be in charge of compliance
17 enforcement and that regulatory industry will continue to work
18 with the State rather than federal EPA.

19 Just to provide some example, I know that regulation
20 is kind of exotic with a lot of quadruple A's, Z's, and O's.
21 This is how EPA refers to their regulations. Just to provide
22 some example, under these adoptions, we have federal rules that
23 address electronic reporting to EPA, requirements during
24 startup, shutdown, and malfunctioning, a provision about
25 testing regulations, requirements for testing and other

1 operational standards, and residual risk assessment for
2 specific source categories.

3 Some examples of industry that are not being affected
4 by these adopt by reference are EGU, electricity-generating
5 utilities, with some streamline of electronic data reporting,
6 municipal solid waste landfills, with, again, correction
7 related to the emissions during startup, shutdown, and
8 malfunctioning, revision of operation standards and corrective
9 action, and also asphalt processing and asphalt roofing, again,
10 with provisions related to startup, shutdown, and
11 malfunctioning and requirements for monitoring devices for
12 control devices.

13 This is in a nutshell what the regulation does. We
14 had a workshop on May 10, 2022. It was in person in Carson and
15 of course, remotely with Lifesize. A total of about 25
16 participants during that workshop, and we didn't have any
17 comments opposing the regulation. And I'll be happy to answer
18 all your questions you have.

19 TOM PORTA: Questions from the commissioners?

20 Sheryl, not seeing anybody's hand raised?

21 SHERYL FONTAINE: Not yet.

22 TOM PORTA: I have a couple. I looked through some
23 of these NSPS and NESHAP subparts here. And I got -- I don't
24 know. I was a little concerned. So one of the new ones, AAA
25 and I guess QQQQ there. AAA is a new resident wood heater.

1 And for anyone that manufactures or sells or distributes those,
2 they have to meet, obviously, certain standards. I mean, are
3 you guys looking to go into Home Depot to enforce this?

4 DANILO DRAGONI: No. This is actually -- I believe
5 this relates to the manufacturers that produce this kind of
6 stove.

7 TOM PORTA: Okay.

8 DANILO DRAGONI: And so these are regulations that
9 are related to how to be potentially certified and how to
10 produce wood stoves.

11 TOM PORTA: Right.

12 DANILO DRAGONI: So no, we are not planning to --

13 TOM PORTA: Okay.

14 DANILO DRAGONI: -- to go to Home Depot.

15 TOM PORTA: Because it also says sell in that. It
16 says, "manufacture, sell, distribute," are the words. And I
17 was just curious, you know, how that's going to work.

18 And the other one is the QQQQ, which is new
19 residential hydronic heaters and forced air furnaces, again,
20 "manufacture, sell, or distribute." So somebody that
21 distributes these, it seems to get down to the pretty micro
22 level here.

23 DANILO DRAGONI: Right. We will probably -- I mean,
24 these -- again, these are regulations related to mainly
25 manufacturers and to potentially certification of the products

1 that are going to be sold. We don't usually go inspecting
2 sellers. And so the compliance and enforcement that we would
3 do, if we do have this type of industry, would be on the
4 manufacturers.

5 TOM PORTA: All right. And like I said, I get that.
6 I mean, I understand that. But what it says is distribute or
7 sell, so I was just curious how the Division was going to
8 handle that if they got information that somebody was selling a
9 forced air unit that didn't meet EPA, you know, emissions.

10 DANILO DRAGONI: I would guess that in that case, we
11 would have to investigate and potentially also communicate with
12 EPA what would be the best approach to address the issue.

13 TOM PORTA: Because you're -- I mean, you're really
14 getting down into the weeds now here with some of this stuff,
15 so just want to bring that up. All right. That's all I had.

16 Any other questions from the commissioners?

17 KATHRYN LANDRETH: Mr. Chairman? I don't know if
18 this is an askable, answerable question because there's so much
19 covered in here. But are there any important examples where
20 the standards have actually been lowered by EPA in terms?

21 DANILO DRAGONI: So that's a good question. And if I
22 may, I might just go very quickly through the process that we
23 do when we actually see these rules being proposed by EPA.

24 To answer your question, no. What we -- there are no
25 rules that are concerning about less stringent or more

1 stringent requirements. What we do is we track all these rules
2 as EPA proposed them. There is a period of comments. There's
3 public comments, so the public stakeholders, Agency can comment
4 and make suggestion to change these rules. And in general, if
5 there is a concern, if NDEP, our agency has concern, we would
6 make comments. We would probably approach the industry to have
7 their opinion.

8 But in any -- none of these rules that we are
9 adopting, we have any concern. To -- there was a couple of
10 rules that we decided not to adopt, and those are related to
11 oil and natural gas. And the reason is because these rules
12 came out in 2020, but in 2021, the EPA has already proposed a
13 new set of rules. So we are just waiting to see what happens
14 to the new set of rules rather than adopting rules that they're
15 going to change in a month or so.

16 KATHRYN LANDRETH: Thank you.

17 DANILO DRAGONI: Sure.

18 KATHRYN LANDRETH: That's very helpful.

19 TOM PORTA: Other questions from the commissioners?

20 Any hands?

21 SHERYL FONTAINE: No hands raised.

22 TOM PORTA: Thank you, Sheryl. Okay. I'll open it
23 up for public comment. Any members of the public may now speak
24 on this agenda item.

25 Anybody here? Nobody's online? Okay. I'll bring it

1 back to the commission for discussion. If there's no
2 discussion, I'll entertain a motion.

3 ADAM SULLIVAN: Chair Porta, I will make a motion to
4 adopt and approve the proposed regulation, LCD File Number
5 R038-22.

6 TOM PORTA: Okay. Is there a second?

7 KACEY KC: I would second.

8 TOM SMITH: I'll second.

9 TOM PORTA: Did we get Tom? Did Tom second? Very
10 good.

11 SHERYL FONTAINE: And Kacey.

12 TOM PORTA: Okay. Very good. All right. We have a
13 motion and a second. I'll call for the vote. All those in
14 favor, please say aye.

15 (Unanimous ayes from commissioners)

16 TOM PORTA: Okay. Any opposed? Motion carried.

17 DANILO DRAGONI: Thank you.

18 TOM PORTA: Thank you. Our next agenda item, Agenda
19 Item Number 6, is a discussion item only. And it's an update
20 on Regulation R119-20. And we'll have someone from the
21 Division give us the update.

22 Don't hurt yourself. It's only a discussion.

23 BRADLEY CROWELL: Chair Porta, I'm going to probably
24 kick this off and then get out of the way and let the experts
25 do more talking.

1 TOM PORTA: Okay.

2 BRADLEY CROWELL: But I wanted to come up here and
3 join today for this topic, but also just to put in an
4 appearance with the SEC as this will likely be the last SEC
5 that I'm in my current position as Director of the Department
6 of Conservation Natural Resources Board. I wanted to thank all
7 the commission members, but particularly you, Chair Porta, for
8 being willing to do this.

9 The burden on the SEC -- and burden may be the wrong
10 word -- but you know, what will be expected of the SEC going
11 forward is only going to increase, and I think that that's
12 probably a good thing on the whole for Nevada. But it does put
13 more strain on all the members of the SEC as the workload
14 increases. So I appreciate all of the SEC members. I know
15 it's a significant time commitment. So thank you all for what
16 you do now and going forward.

17 TOM PORTA: No problem.

18 BRADLEY CROWELL: With respect to Item Number 6, I
19 just wanted to briefly lay out some context here on this
20 informational item. At the Department level, we've been
21 supporting the Division of Environmental Protection as they go
22 through this process for, gosh, it's been about two years now.
23 And the goal here is to put in place a more formal process for
24 designating surface waters that may have extraordinary
25 ecological, aesthetic, or recreational value.

1 We've also been very supportive of the Division's
2 efforts to review and update the anti-degradation program for
3 surface waters of higher quality so that it is more consistent
4 throughout the state and how it's applied. From what I have
5 heard, we have not seen -- it's not that the existing process
6 is broken by any means. That doesn't mean we shouldn't be
7 getting ahead of things and have a modern, proactive system for
8 managing our waters and designating the quality and value of
9 those waters.

10 And to rather than wait until the system is broken, I
11 think this is a smart step in getting ahead of it. And like I
12 mentioned, there's been extensive stakeholder input on all
13 sides of the equation. And NDEP has worked extensively to
14 address those concerns. And my understanding is that there
15 is -- that the majority if not all of the stakeholders feel
16 comfortable that their concerns have been addressed as much as
17 possible, to the extent it's -- the proposal now looks, you
18 know, fair and balanced. So I hope the SEC can give its due
19 consideration under that context.

20 You know, it's -- there's a heavy workload for NDEP
21 these days, including on this topic. And I'd hate to see that
22 not move forward in some positive way because, you know, it's
23 not an insignificant undertaking for the water team. And
24 Jennifer will get into more details about the benefits of the
25 program and how it will be applied. And I'd just ask the SEC

1 to take a very open, proactive approach to considering the
2 update and act accordingly.

3 So with that, I appreciate all of your service and I
4 will turn it over to Deputy Director Carr.

5 TOM PORTA: Thank you, Brad.

6 JENNIFER CARR: Thanks, Brad. So good morning,
7 Chairman Porta, members of the commission. For the record, I'm
8 Jennifer Carr, Deputy Administrator for NDEP. And thank you
9 for being here today to help us out with this petition.

10 As I noted in my email to the -- that you received
11 through the executive secretary, Ms. Fontaine, a few days ago,
12 our desire this morning is to create a workshop-like atmosphere
13 this morning for discussion. So this will be a little bit
14 different than other agenda items that you've experienced in
15 the past. In fact, this may be the first time that we've done
16 this kind of thing.

17 So a portion of petition number R119-20 is dedicated
18 to establishing a clear process for a person to nominate a
19 Nevada source of water as having extraordinary ecological,
20 aesthetic, or recreational value, as Brad described. Today,
21 just for ease of conversation, we'll refer to them as EAWs.
22 It's less of a mouthful.

23 Ultimately, a water could not receive an EAW
24 designation without going through the regulatory amendment
25 process that will have to follow the Administrative Procedures

1 Act. The Administrative Procedures Act has all our required
2 steps that we typically experience in a rule-making. That
3 includes official outreach workshops, LCB petition filing and
4 drafting, adoption hearings, and then subsequent approval by
5 the legislative commission to approve regulations.

6 As you've heard from Brad, we were approached some
7 time ago. It was actually in 2019. While we had already been
8 working on our anti-degradation program for a couple years
9 before that, in 2019, the Nevada Conservation League and the
10 Western Resource Advocates submitted a white paper of sorts and
11 approached us to discuss the ability for someone to nominate a
12 water body that has outstanding characteristics.

13 We identified to them early on that anyone can
14 propose a regulatory amendment to the SEC using Form 1. That's
15 available on the website. Although, to our recollection, no
16 one has actually done that besides NDEP or the DMV, which also
17 brings regulations to you from time to time.

18 A

19 Because some nominations are likely to come from
20 outside NDEP on these EAWs going forward, through the
21 discussions we had with various entities, it became clear that
22 a defined process for nominating a water and embarking on the
23 regulatory revision process really would benefit from
24 specificity on minimum supporting documentations that would
25 come in with SEC Form 1 and create clarity, consistency, and

efficiency for your future decision-making process.

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1 Nevada has an established beneficial use designation
2 for waters of extraordinary ecological or aesthetic value in
3 regulation. And through this petition, it's envisioned that we
4 would also add recreational attributes to be considered as
5 well. To date, though, Lake Tahoe is the only water body to
6 have received this aesthetic designation in our water quality
7 standards.

8 To help frame this discussion as you're thinking
9 about this going forward this morning, a designation as an EAW
10 could also benefit other types of extraordinary waters, such as
11 high-altitude lakes that feed water streams, waters within our
12 state parks or state recreation areas or our national park, or
13 other important waters, such as fisheries, spawning streams.

14 Initially, we had two paths for nomination of an EAW.
15 An interested party originally was envisioned to either be able
16 to approach the SEC directly or to approach NDEP and, you know,
17 seek us as a partner in preparing the package. But based on
18 comments and workshops that we had with our stakeholders, the
19 green line draft petition that you had in your binders trims
20 that down to one process so that everyone would follow the same
21 and make it simpler.

22 During development of this petition, as is in your
23 binder in the draft, we had compiled a list of items that we'll
24 discuss that we thought you would want to know in considering
25 an EAW petition and prior to designating a specific water body

1 as an EAW. And as Brad alluded, we got various levels of
2 comment both in support and various adverse comments to what we
3 had prepared, which is what that process is all about.

4 Just to give you an idea of what Paul and his team
5 have gone through in the last couple of years, there has been
6 actually an unprecedented amount of engagement with our
7 stakeholders. Typically, much like the petitions that you
8 heard this morning that are a little bit more straightforward,
9 you know, we write the regulation, we submit it to LCB, we
10 bring it back for a workshop, for public workshops to hear
11 input from CEMs, like in Rebecca's position this morning. And
12 then it comes to you.

13 Paul's group has had -- I don't even know the number
14 of workshops we've done or, you know, informal informational
15 discussions. And then, they also went to the point of
16 creating, like, tabletop exercises to run examples of these
17 waters and anti-deg rules through the system, just to see how
18 it would work. And so it's been really amazing, actually, to
19 get the amount of engagement that we've had from stakeholders
20 across the board, both industry and non-government
21 organizations, so.

22 So functionally, once we have a process for
23 establishing a water body as an EAW in regulation, what will
24 result is that an EAW would be assigned a tier of protection.
25 And you'll hear more from Paul in a minute about Tier 3, which

1 is the best tier, or Tier 2.5, which is slightly lower, and how
2 those tie into our proposal to update our anti-degradation
3 regulations that are used during water pollution control
4 permits.

5 While the focus today will be on EAWs, Paul will
6 touch on our anti-deg, or anti-degradation, anti-deg, work for
7 you this morning so you can better understand the tie between
8 the two, how they work together.

9 I'll segue for just a moment because given our
10 history working with the SEC, we know that you often want to
11 hear about other what other western states are doing in this
12 arena. So Paul's staff had compiled some information from
13 other states in the research into their laws and regulations.
14 And they basically fall into about three different ways of
15 looking at EAWs.

16 Arizona and Washington, the director designates an
17 outstanding water through an administrative rule-making process
18 in Arizona or just a written determination in the State of
19 Washington. And that would happen after receiving a nomination
20 from an interested party with certain supporting documentation,
21 just like we're looking at.

22 In the majority of the states, Colorado, New Mexico,
23 North and South Dakota, Oregon, Utah, and Wyoming, an
24 environmental or water quality commission board or a council
25 designates the outstanding water through an administrative

1 rule-making process and any interested person can be involved
2 in the process and serve supporting documentation as, of
3 course, required.

4 In Idaho, the Board of Environmental Quality
5 recommends outstanding waters, but the legislature actually
6 designates them in statute. And Montana is much like Nevada in
7 our process where their board of environmental review adopts
8 rule-making which is not effective until it is approved by the
9 legislature. That's like our process with the legislative
10 commission, through the regulation.

11 Just in summary, Arizona has 22 designated waters,
12 Colorado has 14, Montana designated all waters wholly contained
13 within national parks or wilderness areas as of 1995 and no
14 other waters are designated in Montana at this time, and
15 similarly, Wyoming designated waters located within the
16 boundaries of national parks and Congressionally designated
17 wilderness areas that were -- had that status in 1999. So
18 that's a bit about other western states. So this kind of fits
19 right in with what the other states are doing.

20 So back to Nevada. For Nevada, the process of
21 nomination and subsequent designation of a water body as an EAW
22 will be somewhat atypical from what you normally see as a
23 petition that we bring, much like we already did this morning.
24 Likewise, we wanted to make sure we heard from you about things
25 that you think should be weighed during this process.

1 As I noted in my email, each of you has a different
2 background, a different area of representation, different, you
3 know, professional and personal expertise, and potentially a
4 potential perspective on what might make one of our
5 high-quality waters exceptional. And you also might have a
6 perspective on the impact that -- whether it be positive or
7 negative -- that and individual designation might have, as well
8 as a perspective on the information that you would like to see
9 in order to process such a (indiscernible).

10 Due to the varying degrees of comments that we
11 received on the list of supporting documentation that we have
12 drafted into the regulation, we have a desire to talk about
13 that this morning, as well as questions that have been posed
14 about NDEP's role in the future process.

15 So NDEP staff got to a point where input directly
16 from all of you really seemed prudent, because we've been
17 projecting what we believed you would want to know. And so
18 now, we're here to have a bit of a workshop to hear from you on
19 what you think you would want to know.

20 So at that time, when Paul thought it was prudent to
21 get information directly from you, we had talked about having
22 an actual workshop, like a separate workshop. But given
23 everyone's, you know, time and the open meeting law would kick
24 in if we had a workshop and there was quorum, we decided to
25 just use this venue instead. So that's why we're here today.

1 So this morning, Paul will provide you with
2 additional background on the petition, a summary of some of the
3 feedback we received and our reactions to that, and where we
4 are now. There are a number of our active stakeholders with us
5 today who would also like to engage in conversation directly
6 with you. After Paul's done, we have representatives, I
7 believe, from about eight entities. And there are two letters
8 that have been provided, one by the Nevada Farm Bureau
9 Federation, and another by the cities of Reno, Sparks, Tumwa
10 (phonetic) and Washoe County.

11 We did ask that our stakeholders take up to five
12 minutes each to provide their thoughts and then have some time
13 for Q and A with you folks. So we anticipate with eight of
14 them that that would probably take about an hour after Paul's
15 done. If you have any questions just generally about what
16 we're doing, I'd be happy to chat about that. Or else Paul is
17 probably about ready to go.

18 TOM PORTA: Do we have any questions from the
19 commissioners before Paul gives his presentation?

20 No one, Sheryl?

21 SHERYL FONTAINE: There are no hands raised.

22 TOM PORTA: Okay.

23 JENNIFER CARR: Thanks, Brad.

24 TOM PORTA: All right. Can we hold off just a couple
25 minutes?

1 PAUL COMBA: Yeah. I got to get connected here, Tom,
2 so that's perfect.

3 TOM PORTA: Okay. Sounds good. We'll take just a
4 couple-minute break here. You want to have -- I tell you what,
5 we're going to lose a couple of members to the restroom, so why
6 don't we take about a five-minute, ten-minute break?

7 KATHRYN LANDRETH: Yeah.

8 TOM PORTA: Okay.

9 KATHRYN LANDRETH: Preventative.

10 TOM PORTA: All right. We'll be back in
11 about -- we'll make it ten.

12 KATHRYN LANDRETH: Prophylactic.

13 (Recess)

14 PAUL COMBA: Thank you, Chairman Porta. For the
15 record, my name is Paul Comba. I'm the bureau chief of Water
16 Quality Planning. I'd like to kind of thank Director Crowell
17 and Jennifer for kind of setting the groundwork on what is kind
18 of coming before you with an unusual agenda item, being an
19 informational item rather than a permanent reg to act on.

20 I think Jennifer kind of covered the first kind of
21 first bullets in this, what this proposed rule is all about.
22 There's actually two parts to it, as kind of shown here. We
23 started talking with our stakeholders, our regulating
24 community, about the concepts behind this reg back in 2018. So
25 that kind of tells you how long we've been at it. We are the

1 first to admit that it's a major shift and a programmatic
2 change as far as how we're proposing to protect and maintain
3 the water quality.

4 Numerous stakeholder outreach meetings, formal
5 meetings with the various stakeholders, workshops have been
6 conducted. And the comments, inputs, the questions that have
7 been raised have all been very great. When you're a regulatory
8 agency, you kind of write regulatory language based on it being
9 regulatory. And oftentimes, the most benefit to us is hearing
10 from the regulated community, the stakeholders that are going
11 to be affected by our regs. Getting their perspective, because
12 oftentimes, we overlook that. So -- and that has been the case
13 with this proposed rule.

14 What I'd like to do today is just kind of really
15 briefly talk about the anti-deg portion of the proposed rule
16 and then kind of tie that back to this process that we're kind
17 of proposing for the special or extraordinary waters. But
18 anti-deg is a program that compliments the water quality
19 criteria to maintain and protect existing quality of surface
20 waters.

21 A water quality standard really has three parts to
22 it. You have your beneficial use, which is a little bit
23 different than Commissioner Sullivan's definition of a
24 beneficial use. Under the Clean Water Act, beneficial use is
25 what's that water body going to be used for? What's it going

1 to support? Is it going to support aquatic life, the
2 propagation of aquatic life, wildlife, is it going to be used
3 for recreational opportunities? Is it going to be used for
4 livestock watering, irrigation, and will it be a potential
5 source of municipal and domestic supply?

6 And based on that beneficial use, there's water
7 quality criteria that protect the beneficial use. So if you
8 say, okay, your water quality parameter A is going to support
9 aquatic life, let's say irrigation, livestock, watering, you
10 could have three different water quality criteria. The water
11 quality criteria that you use, though, is the most restricted
12 one. And generally, 90 percent of the time, it's that aquatic
13 life criteria that it basically protects not only for aquatic
14 life but it also protects for irrigation, livestock watering.

15 So those are your criteria. The third part of a
16 water quality standard is what's called your anti-deg
17 provision. And what anti-deg does is it more or less protects
18 water quality conditions when they're better than the water
19 quality criteria and it prevents further degradation of
20 conditions when the water quality is impaired.

21 This anti-deg policy program is really implemented,
22 though, during the permitting process. So when the discharge
23 permit is proposed for a point source discharge, and that
24 permit is being developed, the anti-deg program is what really
25 kind of determines what's going to be your effluent permit

1 limits that's going to be put into your permit to protect the
2 receiving water quality body.

3 This next slide here is kind of to show -- and oh, I
4 should mention, you know, hopefully everyone has a copy of the
5 presentation. It's going to probably be a lot easier to follow
6 along with the hard copy. But on this next slide here, what
7 we're trying to show is how these tiers of anti-deg protection
8 kind of are -- what they mean based on the water quality. And
9 what's shown on the left-hand side there is your water quality
10 is getting better as you go up.

11 So you start with Tier 1. Tier 1 is applicable to
12 all waters. And what Tier 1, the protection level under that
13 tier is that you protect for the beneficial uses. In other
14 words, you can -- you don't want to go below the water quality
15 standard level. Okay?

16 Also in this proposed rule, we have -- are
17 designating the Tier 1 of protection being, you know,
18 applicable to an effluent-dominated water, where that
19 effluent-dominated water is based on 80 percent of the flow is
20 wastewater effluent, wastewater that's been treated. And that
21 effluent flow isn't present in that water body for -- waterway
22 for at least 300 days on an annual basis.

23 The idea there is if you got a wastewater treatment
24 plant putting out treated effluent, the water quality is going
25 to be and that receiving water body is going to be a function

1 of the treatment level of the wastewater treatment plant. And
2 generally, those wastewater treatment plants have to treat to
3 the water quality standard level.

4 And then as you go up in the tiers, Tier 2 then
5 becomes the tier that would protect high quality waters. And
6 by high quality waters, that's where the existing water quality
7 is better than the water quality standard level. So for
8 example, for a parameter if the water quality standard is 100
9 but the existing quality in the receiving water body is 75, the
10 idea would be if you protect for that level of 75 rather than
11 allowing a discharge to be put into the water at the 100 level.

12 So that's Tier 2. And Tier 2 really is the focus of
13 a state's anti-degradation program. Also, what states need to
14 have as part of their anti-deg policy is a way to assign waters
15 these higher levels of protection that are shown there, the
16 Tier 2.5 and the Tier 3. And I'm not going to spend a lot of
17 time talking about that because I will certainly back it up in
18 a later part of this presentation.

19 But somehow, a state needs to have what is going to
20 be the process and what are going to be the criteria that are
21 used to make a decision to assign these higher levels of tier
22 protection to the water bodies. Just what water bodies, you
23 know, get assigned those higher tiers of protection, that is
24 left to a state's discretion on, you know, what are going to be
25 the qualifications, et cetera, to put waters into those higher

1 tiers.

2 So just a really simple example to demonstrate how
3 these tiers are attached to anti-deg -- tiers of protection
4 would work. Let's say you have a discharge with A, B, and C in
5 the discharge, okay? In the receiving water body, if A is,
6 like, around the water quality standard level, water quality
7 parameter A would be assigned a Tier 1 protection level. In
8 other words, the water quality standard would be used in the
9 effluent permit as a permit limit as, okay, you're going to
10 protect the water quality standard level.

11 If parameter B is better than the water quality
12 standard, in other words, it would qualify for a Tier 2,
13 parameter B would be protected with what we're calling an RMHQ.
14 And I'll talk about that in a minute here. So B would be kind
15 of what I described, 100 versus 75. And then, let's say you
16 got the third parameter, C, and C is actually -- in the water
17 body, it's actually impaired. In other words, the
18 concentration of C is worse than the water quality standard.

19 Well, under the anti-deg protection program, you
20 would still assign a Tier 1 protection level to parameter C.
21 In other words, you wouldn't discharge to increase the
22 degradation of the water -- of the receiving water body. What
23 the intent would be is you would have to discharge at at least
24 the water quality standard level in hopes that it would improve
25 the conditions in that receiving water body.

1 So what does an RMHQ do? Well, it's a requirement to
2 maintain higher water quality, and it essentially applies to
3 when the water quality is better than the water quality
4 standard. It's the (indiscernible) inherent value that's based
5 on the 95th percentile value of your water chemistry results.
6 Ideally, you've got a 95th percentile that was based on five
7 years of quarterly data. So we're talking 20 samples.

8 And the reason for that is that provides a
9 representative dataset that includes the different flow regimes
10 that you may see in water and also captures the variability
11 that's inherent when you start looking at water quality data.
12 Right now, the RMHQ program is currently used to protect higher
13 water quality conditions and surface water segments thereof.
14 And I just want to kind of touch on that "segments thereof".

15 So if you were, like, to look at the Carston River
16 from the state line coming down, and let's say into
17 Gardnerville. And I've got parameter A. We'll use parameter A
18 again. From the state line down to, say, just where
19 Gardnerville would begin, A may be at a very low level compared
20 to the water quality standards, so an RMHQ would be at that
21 level.

22 And let's say once you get into the Gardnerville area
23 and into the Gardnerville valley, A is still better than the
24 water quality standard, but various inputs have come down into
25 that reach of the river. But an RMHQ would still be developed.

1 However, that RMHQ could be quite -- it could be higher than
2 the RMHQ that was set from the state line down to Gardnerville.
3 So an RMHQ depends on what's the water quality that's existing
4 in that segment of the river that's in question.

5 So in effect, what we are going to be proposing in
6 this proposed rule is to adopt the RMHQ process into
7 regulation. And what that process means is the process that's
8 used to set the RMHQs, when they are set, and sort of some
9 criteria that apply to the setting of those RMHQs. This will
10 be adopted in the regulation rather than the current situation
11 where it's in existing guidance documents right now.

12 As I mentioned, the anti-deg really applies when it's
13 implemented during the permitting process where a review is
14 conducted to determine what should be the permit limits to
15 protect the existing water quality of the receiving water body.
16 Three bullets up there kind of give you different scenarios
17 that would involve permitting and developing a discharge
18 permit.

19 The anti-deg review is conducted on an individual
20 water quality parameter basis. And I think I kind of alluded
21 to that in some examples that I used. What's going to be your
22 pollutants, your parameters of concern, and your discharge?
23 What is the corresponding levels of those parameters in the
24 receiving water body?

25 And based on whether they're the same as the water

1 quality standard or better than the water quality standard,
2 that determines whether it's a Tier 1 or a Tier 2 protection
3 level and those tiers then become your discharge permit limits.

4 Something that's different than what was discussed
5 during the workshops we had with stakeholders is this anti-deg
6 review would be completed by the Division. It's coordinated
7 between water quality planning as well as water (indiscernible)
8 and control during the permit development process.

9 Certainly, that does not insinuate that this is going
10 to be a black box sort of deal. There would certainly be
11 discussions and meetings with the permittee to explain what's
12 being done, why is it being done, what is the anti-deg review
13 showing, et cetera, and soliciting input back from the
14 permittees. You know, if they're in agreement or if we've
15 overlooked something in doing the anti-deg review.

16 So to summarize anti-deg protection, the intent is
17 not to prevent a discharge. The intent behind this program is
18 to develop discharge permits with the idea being that the
19 discharge -- the whole idea being is you want to prevent the
20 discharge from degrading the water quality in the receiving
21 water body that that discharge will go into.

22 So before I jump into the next part of the
23 presentation, maybe I'll stop there and ask if there's any
24 questions related to this anti-deg proposed program that we're
25 going to be bringing back in front of you. Certainly, what I

1 gave you was a 30,000-foot, simplified view. I will make that.
2 The minute you start drilling down into the details of what the
3 anti-deg program really entails, there's different issues that
4 need to be addressed and they'll be discussed in more detail at
5 a later SEC hearing date.

6 TOM PORTA: Any questions from the commissioners at
7 this point?

8 Nothing, Sheryl? Okay. Go ahead, Paul.

9 PAUL COMBA: Okay. As I mentioned, the guidance
10 related to states and tribes developing an anti-deg program,
11 the suggestion is there should be three periods of protection.
12 And kind of highlighting the Tier 3 and Tier 2.5. Generally,
13 you have three tiers, 1, 2, and 3.

14 What the ramification of a Tier 3 designation is that
15 once that water is assigned that tier of protection, the
16 decision that's being made is that there will be no new
17 discharges into that water body. Existing discharges are kind
18 of grandfathered in under the premise that they can't expand.
19 So you're really setting a high bar of protection once you
20 assign a Tier 3.

21 What we have proposed as the fourth tier, the Tier
22 2.5 here, that would apply to the extraordinary or outstanding
23 waters, both 3 and 2.5 really apply to these waters and we're
24 going to discuss here in a bit how those waters are determined
25 and what criteria are used. But the Tier 2.5, what it provides

1 is a higher level of protection than Tier 2, but it's not as
2 restrictive as Tier 3.

3 In other words, discharges into that EAW with a Tier
4 2.5 protection level would be allowed new as well as expanding,
5 existing discharges. But they would have to be non-degrading,
6 in other words. But when a discharge would be proposed into a
7 water with a Tier 2.5 protection level, the same concepts that
8 I described for Tier 2, Tier 1 would apply. In other words,
9 what is the existing quality of individual water quality
10 parameters in a Tier 2.5 water, are they Tier 1 or Tier 2, and
11 then those are brought forward into the discharge permit.

12 So states need a process that is either part of their
13 anti-deg program or a separate process that's kind of parallel
14 and tied to the anti-deg program to determine which waters are
15 assigned these higher levels of tier protection. And that kind
16 of leads into the second part of the proposal, which is what is
17 the process proposed process for deciding which water should be
18 assigned a higher level of anti-deg protection? And we're
19 referring to these waters as EAWs, ecological, aesthetic,
20 recreational waters. And kind of really in broad terms, an EAW
21 would be a water that is pristine, unique, and provides an
22 exceptional value or benefit. Okay?

23 The classification, really the nomination and
24 classification of these surface waters, Jennifer, kind of
25 described briefly, gave an overview of how that would work.

1 It's -- if we kind of start with the very bottom bullet, this
2 whole process would involve public engagement from an agency,
3 decisions, and recommendations.

4 We would be using the existing regulation procedure.
5 That would be NAC 445B.886, which is filing petition with the
6 SEC executive secretary. During this formal rulemaking
7 process, the end result would be a regulatory petition. A
8 draft reg would be brought back before the commission for
9 action to decide whether or not to classify a water as an EAW.

10 But during that process, the merits of the nominated
11 water would be evaluated. You would assess why a higher level
12 of protection is needed because like I've hopefully been able
13 to illustrate, by assigning those higher levels of tiers of
14 protection, what you're really kind of making the decision is
15 you're going to either prevent or you're going to restrict
16 future point source discharges into the receiving water body.

17 But we have in existing water quality standards
18 program that protects the beneficial use of a water body.
19 Assuming we land on an anti-deg policy that's acceptable to our
20 stakeholders, our regulated communities, that they can work
21 with, now we have a program that's going to protect higher
22 water quality conditions in a water body.

23 Then, on, you know, another tangent to that is
24 through the water pollution control, there's a suite of regs
25 that kind of define just what can and cannot be discharged into

1 our water bodies. So with those three variables, the question
2 would have to be -- and explanation would have to be
3 provided -- why is this higher level of protection warranted?

4 One big thing that also would be kind of fleshed out
5 during the rulemaking process is what's the compatibility of an
6 EAW water with existing water uses, existing discharges into
7 the water body, as well as adjacent land use activities.

8 Okay. Maybe at this point, I can refer the
9 commissioners, you know, members who have the PowerPoint
10 presentation, to the green line version of the proposed reg
11 that was provided for you. What this represents is preliminary
12 comments have been made on the proposed rules based on
13 stakeholder input and discussion during the workshops related
14 to the EAW section of the reg.

15 As Jennifer alluded to, we are saying that there's
16 one path that we're kind of proposing to nominate a water body,
17 per the NAC I just described. And the water body would be
18 nominated based on having the following attributes as shown on
19 this slide. It's pristine, it has high water quality
20 conditions, it has a unique water quality characteristic, or it
21 has extraordinary ecological, aesthetic, or recreational value.

22 So the end result of a water being classified as an
23 EAW is the beneficial use which is right now in NAC
24 445A.122 -- remember I talked about beneficial use described in
25 water quality standards? The beneficial use would be

1 assignment of a water of extraordinary ecological or aesthetic
2 value. The word recreational will have to be added to that
3 definition, that beneficial use, you know, in our proposed
4 rule.

5 But the idea behind that beneficial use is the unique
6 ecological or aesthetic value of the water must be maintained.
7 Right now, Lake Tahoe on the Nevada side of the lake is the
8 only water body within our water quality standards that has
9 this assigned beneficial use. It hasn't been classified as an
10 EAW yet because the EAW process really hasn't been approved at
11 this point.

12 So what we're envisioning here -- and it is us
13 envisioning this. And this is a topic that really kind of
14 discusses looking for some input back from the commission
15 members is what is the process to nominate and classify an EAW?
16 We're thinking it may be a two-step process. You may have
17 different opinions on that. And you know, hopefully, we'll
18 hear about that.

19 But to kind of keep going with that, that line of
20 thought, step one would be any person -- you know, NAC 445B.886
21 says any person can petition the SEC to adopt, amend, or repeal
22 a regulation by filing Form 1 with the executive secretary of
23 the SEC. So step one would be filing Form 1, a petition to
24 nominate the surface water with relevant data, views, and
25 arguments for the petition.

1 What I've done here in green is kind of provide
2 questions that will hopefully kind of allow you to begin to
3 think about what we're hoping to gain as far as guidance,
4 suggestions from you. What is relevant data, views, and
5 arguments? You know, in this step one process, should really
6 the focus be on the water itself that's being nominated?

7 You know, other information that may be helpful in
8 making the decisions is what's the reason for the nomination
9 and going back to what I just discussed a little bit a while
10 ago is why? Why is this extra level of protection needed?
11 Which is really what an EAW classification is going to provide.

12 You know, in this initial submittal, should there be
13 letters of support for the nomination. What we're also kind of
14 hoping to get some feedback on is what's the expectations of
15 the commission during our role, NDEP's role, during this first
16 step?

17 And this first step is kind of outlined in the next
18 slide here. It's a very simplified kind of flow chart. Here
19 again, starting with filing the petition with the SEC. What we
20 kind of, you know, thought about is, okay, when that petition
21 comes in to Sheryl, Sheryl would probably reach out to the
22 chair, possibly the vice chair, and counsel for the commission
23 to say, okay, we have a petition. It's been filed by so and so
24 and it's for water body such and such. Do we put it on the
25 next SEC hearing agenda to be considered on whether this

1 nominated water body should be moved forward in the process or
2 just simply denied? Okay?

3 In that scenario that's up there, you know, coming
4 back to where would the commission, you know, value input from
5 NDEP? And that kind of comes -- okay.

6 JENNIFER CARR: Finish your thought.

7 PAUL COMBA: No, no. I was going to jump.

8 JENNIFER CARR: Okay. I was just going to add, one
9 of the things about this part of the process is that the
10 regulations for proposing regulations through the SEC when Form
11 1 is initially submitted to the Agency -- why did that go
12 blank? Okay. Oh, there it is. Okay. Don't touch it.

13 When a Form 1 is received, it's required that the SEC
14 make a decision on that initial form within 30 days.
15 Obviously, we can't pull together an SEC hearing within 30 days
16 in order to consider that petition itself and the content of
17 that with all of the commissioners or even a subset.

18 And so that's why it's proposed that the executive
19 secretary and either the chair or the vice chair look at that
20 form when it first comes in, within that first 30 days, and
21 basically give it a, you know, a screening level sort of thumbs
22 up, thumbs down, are we ready to put this on the next hearing
23 of the SEC to be initially considered by the bank of
24 commissioners. Because then we would have the time to put the
25 hearing together and notice it properly and everything.

1 So that is -- it's an unusual step, but it's one that
2 we're trying to figure out. And we've worked with SEC counsel
3 to try to figure out how to fit that 30-day timeframe into this
4 process. And so that's what that is about. Once that -- you
5 know, if it's a complete application, whatever complete is
6 going to mean, and it's -- and the chair says yeah, let's put
7 it on the next agenda, that's when you get to that second box.

8 I just wanted to give that little explanation as to
9 why the executive secretary and the chair or the vice chair are
10 doing their own thing sort of outside a commission hearing. So
11 that's what that's about.

12 PAUL COMBA: Okay. Great. That's perfect, brings it
13 back to something I probably was going to forget about. So in
14 the step one, what we're kind of looking at in the proposed
15 rule would be on page two. If everyone agrees that it should
16 be a two-step process, then in this initial submittal of
17 information that would accompany Form 1, would items 1 through
18 5 kind of fit that bill.

19 You know, the question may be asked, so what waters
20 are you talking about as being a possible EAW? Well,
21 obviously, Tahoe. I would say if this process is vetted,
22 agreed to, and approved, Tahoe would be one of the first water
23 bodies, the Nevada side of Tahoe, that we would kind of bring
24 through this process to formally designate it as an EAW. Okay?

25 Would the Humboldt River be a possibility? No.

1 Carson River, even in the valley? Probably not. During the
2 workshops that Jennifer talked about, we did some desktop
3 exercises and we used Cave Lake as an example. Cape Lake
4 kind of has possibilities. It's in a state park. Okay? So
5 your recreational opportunities are already there.

6 I believe water rights for Cave Lake is
7 adjudicated -- and I'm not sure if that's right. But anyway,
8 they blocked the end out and it now uses them to basically
9 manage a recreational fishery in the lake. So you have that
10 whole aspect. And I think everybody would agree that Cave Lake
11 is in a pretty cool part of the state. It has aesthetic value.

12 Being in a state park, being managed by a state
13 agency for a fishery, a recreational fishery, those are two
14 plusses. The other thing is there's no competing land use on
15 Cave Lake. Up gradient of Cave Lake, there's no water
16 withdrawals. There's no discharges up gradient of Cave Lake.
17 Competing land uses. I'm not aware of any grazing being done
18 up gradient of Cave Lake. There's no grazing, et cetera, ag
19 activities around Cave Lake.

20 So that just is kind of an idea of a candidate water
21 body that could possibly be considered as an EAW. And you
22 know -- and you may get tired of me saying this -- but what
23 we're kind of looking for is what would you as commissioners
24 like or expect to see in these different steps that we're kind
25 of proposing? Because what you would like to see or expect

1 gives us the guidance that we need to, you know, develop the
2 regulatory language that will call out what needs to be
3 stipulated and in the regs, and it gives us, then, something to
4 rely on to ensure that a petition meets all of your
5 qualifications and expectations.

6 You know, I'm just going to repeat this slide one
7 more time. We can circle back to it, I think, at the end,
8 because there's a better summary slide at that point. So okay,
9 let's say the nomination has come in. The commission has made
10 a decision to move it to the next part of the process, the next
11 step of the process. What that would be is, okay, if you move
12 into step two, where a regulatory petition would be developed,
13 a draft regulatory rule would be developed.

14 So the decision is being made to initiate the
15 rulemaking procedures to go towards the next step. And in the
16 green line version of the reg, that is where items 6 through 9
17 come in. We feel that in order for the commission, when it
18 gets to the point to do the actual classification, there is
19 going to have to be supporting information included within the
20 regulatory petition, as in exhibit material, et cetera, to
21 allow an informed decision to be made on whether an EAW water
22 should be formally adopted.

23 And that informed decision, what I'd like you to
24 refer to is on page 4 of the green line version of the reg. We
25 are saying that, you know, when an EAW, a decision is possibly

1 going to be made to classify a water as an EAW, that
2 classification cannot impact water rights in any way, cannot
3 impact anything from Commissioner Sullivan's office. It cannot
4 have an impact on existing discharges. It cannot impact
5 adjacent land use next to the EAW.

6 So even though we say that an EAW cannot impact those
7 uses or be, you know, have any effect on it, you know, our
8 opinion, and you may hear a different opinion from when our
9 stakeholders talk today, is that information is going to have
10 to be included in the regulatory petition in order to make a
11 decision on whether to classify a water as an EAW.

12 During this second step, what we would envision our
13 role being, NDEP's role being, is we would kind of act as a
14 technical advisor to the SEC. In other words, based on the
15 information that's been compiled and gathered and maybe just
16 initially related to the water body, the additional information
17 that's compiled and gathered, does this water body, you know,
18 meet the bar that it's going to have to meet in order to be
19 classified as an EAW? Is there going to be impacts to what I
20 just described, the existing water uses, discharges, competing
21 land uses, et cetera.

22 What I'd like to also just really briefly call your
23 attention to is on initiate the rulemaking proceedings, there's
24 that red asterisk. In the proposed rule language right now, we
25 have an off round where if a decision is made to move a water

1 body forward to actually start rulemaking procedures,
2 proceedings to develop a regulatory petition, if for some
3 reason, during the review of that information, something pops
4 up where all of a sudden, it's a red flag and it would be like,
5 well, this water body isn't going to make it through the
6 process.

7 The commission would have the option to notify the
8 nominating party that it's not going to continue to move
9 forward. In other words, there's no reason to let it go all
10 the way through the process to the SEC hearing to classify the
11 water as an EAW. Kind of what the thought process is, is when
12 a water would become an EAW, like I said, you would assign a
13 beneficial use to it.

14 But then, as water bodies are classified, there would
15 be a separate table added to the NAC that would list what's the
16 water body that's been classified as an EAW, what anti-deg tier
17 protection that's been assigned to it, whether it's Tier 2.5 or
18 Tier 3, and what was the date as such. Because I think that
19 date as such then creates a time period for us, for NDEP to say
20 from that date forward, this is the existing water quality in
21 that water body that needs to be protected. And that record
22 would probably be maintained in-house of some means.

23 So I think I'm just going to, you know, really
24 briefly kind of leave this up there for people to kind of look
25 at. Because really, I think the next point -- the next slide

1 is probably going to be the most useful in soliciting some
2 input and guidance.

3 So with the two steps that we kind of propose, and on
4 that, once again, I want to reiterate that we're not saying
5 that's the way this should work, that's the only way to work.
6 The two steps would be, okay, if step one is to nominate a
7 water for an EAW status, the argument for including just
8 information related to the water body as shown here on the
9 left, is that you're going to designate a water body based on
10 water quality information. And you're going to
11 protect -- you're proposing to protect this water based on
12 water quality policy, anti-deg.

13 So if there is a two-step process, is the nomination
14 including just water, what's shown there is sufficient for the
15 SEC to make a determination on whether to move the water -- to
16 move the water into the next step of the process, where it
17 would develop a regulatory petition to come back to the SEC to
18 be formally designated as a water body.

19 The Division's belief is -- and on that process, that
20 more information is going to be required to be collected and
21 compiled by the nominating party. And that's kind of shown
22 there in the green font there. That's what we believe is going
23 to be the additional information that's going to have to be
24 compiled, gathered in order to allow the commission members to
25 make an informed decision.

1 What we have -- and why that additional information
2 is shown there is what we've heard from our stakeholders, the
3 regulated communities who may be affected by an EAW designation
4 is that hey, we're in the same watershed as -- we could be in
5 the same watershed as this EAW-nominated water. You need to
6 take into account our interests, et cetera, in making a
7 decision on whether to designate a water as an EAW.

8 Permitted withdrawals. Of course, that goes without
9 saying it. Permitted discharges. One of our stakeholders
10 brought up a very, very good comment. You could have a
11 wastewater treatment plant that's running, you know, just
12 status quo. And all of a sudden, you have a population growth
13 in this area. So you have more -- an increase in housing, et
14 cetera.

15 That increase in the residential leads to a greater
16 volume of wastewater coming into the plant. The plant doesn't
17 have a choice. If it shows up at its doorstep, it has to be
18 treated. Well, that could mean that the wastewater treatment
19 plant has to expand their discharge in the future. That has to
20 be, you know, drawn out during the evaluation process, is if an
21 EAW is, you know, designated, could that have an impact on a
22 future expansion of a wastewater discharge -- wastewater
23 treated discharge.

24 The compatibility of existing land uses, that is, you
25 know, you could have adjacent landowners that are using that

1 land for ag, for livestock grazing. It was also brought up,
2 well, what about private landowners. You could have a water
3 running through a private landowner's property. What's their
4 opinion on the water being designated as an EAW?

5 So we think that has to be brought into the whole,
6 you know, process. Social and economic benefits, we're not
7 looking for, you know, a just intense evaluation. But by
8 designating a water as an EAW, is there going to be a benefit
9 to the local business community or is there going to be any
10 impact to business community, to the stakeholders, to the
11 industry in the watershed? Because you could have an industry
12 in the watershed that's, you know, not adjacent to the water
13 body. It could be higher in the watershed. But they could
14 still be impacted by a decision to classify the water as an
15 EAW.

16 Outreach efforts have been brought up several times
17 during our workshops. When does the local community get a way
18 in and how does the local communities, you know, opinion get
19 taken into account?

20 So like I want to just kind of maybe summarize here,
21 if NDEP's role is to guide the nominating party through the
22 regulatory process, we need to rely on what is in the regs.
23 And that is kind of like we've included all of it right now in
24 our draft regulation. That kind of gives us what we need to
25 say, hey, you need to do a, you know, an inventory on what are

1 the permanent withdrawals from this water body, as an example.

2 In-house, I think we would make what information we
3 have available, whether it's on the water quality side or on
4 the water pollution control side as far as what discharges are
5 out there, is there a potential for those discharges to be
6 going into the water body or up gradient to expand that could
7 be possibly affected by the EAW, et cetera.

8 So the last thing maybe to kind of end on is from a
9 commission perspective, it is a two-step process directly to
10 go. You know? If you look at the information all on the
11 right, that's quite a bit of resources being dedicated to put
12 together a petition. But would the commission rather see when
13 that initial petition is filed through the executive secretary
14 that it be robust enough that it would include all this
15 information for the commission to make a decision that it would
16 go forward to develop a regulatory petition, a draft reg at
17 that point? Is it feasible? Does the water body support it?
18 Is the additional information kind of in agreement with a water
19 body moving forward, rather than going through this two-step
20 process?

21 I'll end there and, you know, entertain any questions
22 that the commission might have. And thank you for your time
23 today.

24 JENNIFER CARR: So just in summary real quick, just
25 to parse it back out in folks' minds. You know, the nomination

1 could come from anyone. All right? And so it's not
2 necessarily NDEP. And so what level, what basic level of
3 information you think should be provided in order to either
4 say, you know, yes, you know, keep going through the process,
5 collect more information, develop your petition in detail, or I
6 don't know, yeah, this doesn't look like a really good
7 candidate for an EAW. You know, and you can go back and do
8 some more homework, but we don't think it should move through
9 the process.

10 You know, some of the question we've had is whether
11 or not in the nomination process, there should be some
12 demonstration of outreach early on. Or does it just have to be
13 somebody's really good idea? Or do you have to -- you know,
14 what level of legwork do they have to do to even seek a
15 nomination?

16 Classification really brings in, you know, a whole
17 host of other information. And then, that's actually where we
18 would assign the tier, the Tier 2.5 or the Tier 3, which would
19 then be used in the permit process. So it could all be one
20 process. But like Paul described, we envision it to be sort a
21 two-step process where at least a minimum amount of information
22 is needed to come through the SEC the first time.

23 And then they might be gone for -- they might be gone
24 for a year or six months, developing the regulatory language
25 themselves and going through the Administrative Procedures Act

1 to get the actual draft of the regulation put together.

2 TOM PORTA: We're good?

3 JENNIFER CARR: Yeah.

4 TOM PORTA: Okay. I'll open it up to questions from
5 the commissioners.

6 JENNIFER CARR: I know that was a walk.

7 ADAM SULLIVAN: Here's a question to just start it
8 off. Lake Tahoe is already recognized as an EAW or? I thought
9 that was the case, but you said that that would be one that
10 would be sort of an easy initial water body to designate. So
11 does it have that designation or not?

12 PAUL COMBA: Lake -- Commissioner Sullivan, Lake
13 Tahoe has that beneficial use that I described, the water of
14 ecological or aesthetic value assigned to it. It hasn't been
15 officially designated as an EAW, just because we don't have the
16 process yet.

17 California side, the lake is designated as an
18 Outstanding Natural Resource Water.

19 JENNIFER CARR: The other piece that Tahoe doesn't
20 have is it's tiering designation, either a Tier 3 or a Tier
21 2.5. So bringing Tahoe, even though it's already designated as
22 an aesthetic water, bringing it back through the process would
23 allow it to be considered, you know, which tier of anti-deg
24 protection it should benefit from.

25 TOM PORTA: And that's a state versus a federal

1 designation, too. You're not -- with EAW, you're starting to
2 bring in the federal component, right? Before, all of our
3 water is pretty much protected by state water quality
4 standards, but not at this higher quality level. EAW now
5 brings that component in; is that correct? On the federal
6 side? Because it's consistent with federal regulations, right?

7 PAUL COMBA: Correct.

8 TOM PORTA: Okay.

9 PAUL COMBA: But it would be a state policy,
10 Commissioner.

11 TOM PORTA: Right. But before, all we had was RMHQs,
12 which is just a state designation. There's no federal over
13 protecting our higher water qualities. We were doing that
14 solely with RMHQs.

15 PAUL COMBA: Right. And we propose to still maintain
16 that program to do such. I believe, you know, Tahoe, the
17 classification of an EAW, that would be a state designation
18 that really is different than the federal designation for a
19 Tier 3 water. So the idea would be you'd provide the same
20 level of protection as ONRW status, but it's really a state
21 designation.

22 TOM PORTA: Did California just have their state
23 designation and not the federal outstanding natural resource
24 water?

25 PAUL COMBA: No. California designates their side of

1 the lake as an ONRW.

2 TOM PORTA: Okay. So it does -- it's under the
3 federal protection for higher quality water. And again, Nevada
4 side is still the state.

5 PAUL COMBA: Yes.

6 JENNIFER CARR: This is Jennifer Carr for the record.
7 If it helps you, there has been discussion about which waters
8 this applies to. This would apply to all of Nevada's waters.
9 The subset of Nevada's waters that are federally regulated,
10 also known as waters of the U.S., are permitted by water
11 pollution control under our national discharge elimination
12 system permitting program, or NPDES.

13 The NPDES program for federally jurisdictional waters
14 is done under our delegation from EPA. And those permits go
15 through EPA review. There's a parallel process for waters that
16 are solely jurisdictional to the state. These processes would
17 apply to those waters as well. But the permitting process
18 would be just slightly different because those permits don't go
19 through federal review during the drafting and initial process.
20 But these would apply to all of Nevada's waters.

21 KATHRYN LANDRETH: Mr. Chairman, I guess I've got,
22 yeah, just a point of clarification. Could you designate
23 federally regulated waters under this program in Nevada? Or is
24 it just to the ones that are within the state's jurisdiction?

25 JENNIFER CARR: So if we drew, like, a Venn diagram

1 like we all did in, like, fourth grade, right, the circle of
2 Nevada's waters encompasses everything. You know, the
3 definition of a state water is pretty much everything from a
4 lake to a stream to a puddle and above ground, underground.
5 Nevada's definition of waters of the state is very
6 comprehensive.

7 Tribal waters are a little subset over here because
8 we don't have jurisdiction over tribal lands. But within
9 Nevada, the large circle in the Venn diagram would be all of
10 Nevada's waters, and then a subset of those are the
11 federally-jurisdictional waters. So this would apply to
12 everything.

13 KATHRYN LANDRETH: They're included, in other words,
14 in the --

15 JENNIFER CARR: Yeah. Yep. Because this is a state
16 program. The permitting program with just for NPDES would
17 apply to the federal waters.

18 KATHRYN LANDRETH: Mr. Chairman, I had another
19 question. When you went through the list of neighboring
20 states, western states, and how many designated waters they
21 had, it looked to me like a lot of them were pretty much
22 defined as, like, within the national parks or state parks or
23 something. I mean, there was pretty much of a definition,
24 these are the priorities, at least.

25 I'm curious about California. I tried to do some

1 research on this and I found only a couple of lakes and one
2 stream or river that might be pending. Is that -- I mean, what
3 I'm saying is it seems like in the reality of things, this is a
4 pretty small, limited group of potential nominees. Do you know
5 how many there are in California? Because that strikes me as
6 one that would have a huge number, if anybody did.

7 PAUL COMBA: I believe in California, there's only
8 two designated ONRWs.

9 KATHRYN LANDRETH: So it's Tahoe and Laurel Lake,
10 right?

11 PAUL COMBA: Correct.

12 KATHRYN LANDRETH: So it doesn't seem -- I mean, one
13 of the things that I think you might have been concerned about
14 are stakeholders, that you'd be overwhelmed with applications.
15 But it doesn't sound like that is likely. I'm just curious.
16 Are you concerned?

17 JENNIFER CARR: We're a little curious about that,
18 too, to be frank. Yeah. There -- Paul has something called a
19 triannual review where he goes out to stakeholders around the
20 state every three years and gets input on what needs to be
21 changed about our program in water quality planning, and he
22 sets a regulatory agenda. So we could potentially work some of
23 these rulemakings in of our own volition into our triannual
24 review process.

25 Maybe we might hear from some of the other

1 stakeholders here shortly as to waters that they envision would
2 benefit from this status. We have Western Resource Advocates,
3 we have Trout Unlimited, we have Nevada Mining Association, and
4 we've got folks from the Truckee Meadows here. So you know, I
5 think -- and the Pew is, too. So I think hopefully we'll hear.
6 Maybe they could better answer that question as to things they
7 have in mind.

8 KATHRYN LANDRETH: Thank you.

9 JENNIFER CARR: There are some potential no-brainers,
10 like state and national parks. And that seems to be where some
11 of the states, like out in Colorado, have tackled it, so.

12 PAUL COMBA: Maybe if I could add something to that,
13 Kathryn.

14 KATHRYN LANDRETH: Yeah.

15 PAUL COMBA: The whole idea behind this process is we
16 would set a very high bar on what waters we actually, you know,
17 even can be considered as an EAW and qualify as an EAW. And
18 you know, you bring up a good point and maybe that's something
19 to start the discussion on. Does there have to be this high
20 bar of information submitted with the initial regulatory
21 petition to prevent multiple waters coming in where a decision
22 has to be made whether to move to the next step of the process
23 or be able to make a decision right there on, okay, this water
24 body qualifies. It's a candidate for an EAW. There may be
25 some additional information that has to be put together to

1 support it. That's a great point, you know, you bring up.

2 TOM PORTA: Other questions from the commissioners?

3 SHERYL FONTAINE: Commissioner Ott has her hand up.

4 TOM PORTA: Okay. Go ahead, Jennifer.

5 JENNIFER OTT: Good morning. Thank you so much for
6 the presentation. I actually have two questions. The first
7 is, is there a definition of unique water quality
8 characteristic, or do you have an intention of defining that in
9 the NAC?

10 PAUL COMBA: Paul Comba --

11 JENNIFER OTT: What is unique to one person might be
12 not unique to another. I was just curious of what you --

13 PAUL COMBA: Paul Comba for the record. That's a
14 great question, Commissioner Ott. And at this point, no, I
15 don't think unique water is defined within the NAC.

16 JENNIFER OTT: All right. It's just something that
17 you might consider as part of the way that the commission could
18 then evaluate what is unique is having that defined in some
19 way. I think it would help in evaluations later on.

20 And then, my second question is have you thought
21 about if anyone can apply for a unique water or request that a
22 body of water go through this program, have you considered that
23 the applicant must have, you know, residency in Nevada or this,
24 this and -- I mean, I could see that there would be potentially
25 some outside interests that would be applying.

1 PAUL COMBA: Some type of standing, the individual
2 would have to have in Nevada.

3 JENNIFER OTT: Yeah.

4 PAUL COMBA: That's an interesting question, there,
5 Commissioner Ott. Actually, the State of Alaska is kind of at
6 the same stage we are with trying to come up with a process to
7 designate these special waters in their state. And they
8 actually are saying that you got to be a resident of the State
9 of Alaska to designate a water body.

10 If you look at the NAC that allows, you know, someone
11 to petition the SEC, it's really kind of open-ended that
12 there -- you know, any person. So I'm not sure if that is
13 detailed enough to say that you would have to have a standing
14 in Nevada.

15 JENNIFER CARR: This is Jennifer Carr for the record.
16 I chuckled when you asked that question, Commissioner Ott,
17 because we actually had that written into one of our earlier
18 drafts, that you had to be a resident of the state in order to
19 nominate. And it was questioned as to whether or not that
20 would be legal. One idea was to just put it through LCB and
21 let them decide if it was legal. But in the drafting process,
22 it ended up coming out somewhere along the way. But that was
23 something that we actually did talk about, and I appreciate
24 that perspective on whether or not it should go back in.

25 TOM PORTA: Well, I think historically, the Sierra

1 Club, that's how they kind of got their start was with a
2 Supreme Court case in which they didn't have standing within a
3 state. So the group formed members in all 50 states, and all
4 they needed was a member living in that state to move forward
5 with their, you know, agenda item that they want to within that
6 state.

7 So the standing issue, you know, I think could go
8 either way. But there's ways around it, I think, is what I'm
9 trying to say.

10 Other questions? Or do you have anything else,
11 Jennifer?

12 JENNIFER CARR: Not on that -- oh, sorry. The other
13 Jennifer.

14 TOM PORTA: Other Jennifer, yeah.

15 JENNIFER OTT: I'm good. Thank you for hearing my
16 questions. I appreciate that.

17 TOM PORTA: Okay.

18 SHERYL FONTAINE: Commissioner Torres, Commissioner
19 KC, and Commissioner Wasley all have their hand up.

20 TOM PORTA: Okay. We'll go in that order. Jocelyn?

21 JOCELYN TORRES: All right. Thank you. I had a
22 couple of questions as well. One was to who can nominate. And
23 I know other states, you know, like the Office of Outdoor Rec
24 within the state or even, like, the Department of Wildlife can
25 make nominations. And I wondered for this whether sort of that

1 any person also qualifies as a, you know, could that be a
2 government agency within the state? Just because I think that
3 that impacts a couple of other questions kind of down the line
4 in the process.

5 So I'll stop there before I ask my other ones.

6 JENNIFER CARR: Okay. Yeah. Jennifer Carr for the
7 record. The definition of person in the State of Nevada is
8 very broad. So if any person can nominate a water, then it
9 would include other entities, such as those you mentioned.

10 JOCELYN TORRES: Thank you. Sorry, I'm going through
11 notes here. I guess on number four, the adequate and
12 representative water chemistry data, I wonder if there's other
13 data that would also qualify within this. I'm not a water
14 quality expert or anything on my end, but you know, we
15 mentioned other, like, ecology and recreation as also
16 important. So I'm just curious if there's no other sort of
17 type of data that could be included within number four.

18 PAUL COMBA: Paul Comba for the record.

19 Commissioner Torres, what we were thinking at this
20 point would be the water quality information. Number one,
21 because if you're going to nominate a water as an EAW, part of
22 that is you're going to set the stage on what is the baseline
23 water quality for that EAW going forward after the nomination
24 has been approved.

25 So that would be important that that baseline

1 existing water quality has to be established, because that
2 becomes your criteria that you maintain and protect for.
3 Either water quality-related information could certainly be
4 submitted as part of a nomination petition to justify, say, an
5 ecological water or it has a unique characteristic. Put the
6 bioassessment data on, you know, what is the quality of the
7 water based on the macroinvertebrates that are living in the
8 water, et cetera. So it could be open-ended.

9 JENNIFER CARR: Well, we'll look -- this is Jennifer
10 Carr for the record. We'll look to see how that fits in
11 because it does talk about adequate representative water
12 chemistry data, which I think is what you're keying in on, and
13 whether or not that's limiting or that provision needs to be
14 expanded.

15 JOCELYN TORRES: Yeah. And I saw, too, I think on
16 one of the letters that were submitted for comment, just, like,
17 the timing, right, of, like, how many times do you have to do
18 it? Is it over a course? You know, how quickly do you need to
19 test water? I mean, just thinking about some very rural spots
20 within our state, like, how quickly you can turn something like
21 that around.

22 So it seems like the maybe "adequate" part of that,
23 we need to better define.

24 PAUL COMBA: Paul Comba for the record. That
25 actually came up numerous times during our public outreach

1 meetings and the workshops. And the reason why we haven't
2 really defined what is, you know, adequate data is I think it's
3 going to be kind of specific to the water body being nominated
4 and it would have to be evaluated on a case-by-case basis.

5 If you're talking about a pristine water in, like,
6 the upper parts of a watershed, maybe one year a day is
7 sufficient. If you talked about another water body that's
8 maybe lower in the watershed, you may need, you know, two to
9 three years of data to say that that water is representative
10 and qualifies the water flora an EAW status based on water
11 quality conditions.

12 JOCELYN TORRES: Thank you. And then, a more broader
13 question from the item 6 through 9. It seemed like those were
14 coming in for the part two of the process. The part one was
15 kind of, like, accepting. And then part two was the rulemaking
16 and going through there. And so I'm pulling upon these items
17 just because it sort of passed through the SEC hands how much
18 of this is still on the person who's petitioning and how much
19 of it is a combination between the petitioner and, you know,
20 staff.

21 And just as an example, like, any future use of the
22 surface waters, you know, if this was just, you know, a regular
23 member of the public, like, how much access do they have to
24 that specific type of information. Or is that something that
25 we're sort of helping provide in partnership with local

1 entities. I'm thinking, like, you know, a county who may have
2 some plans for, your example, like increasing housing within a
3 particular area that we might not know that just by land use
4 plans or other things as members of the public.

5 PAUL COMBA: Okay. I'll go ahead and take that.

6 JENNIFER CARR: Yeah.

7 PAUL COMBA: Paul Comba for the record again. We
8 would envision that that would be on the nominating party.
9 Your comment you bring up, Commissioner, we have heard that in
10 the workshops and you'll probably hear it today from some of
11 our stakeholders having the same concerns.

12 But if our role, the Division's role, is to kind of
13 be the technical, you know, advisory to the SEC and evaluating
14 the information, you know, vetting it, you know, doing the due
15 diligence on it, we really can't get involved with also being
16 part of the nomination because there's a conflict of interest
17 there. And that has been -- that was brought up during our
18 workshops by people on the other end of the table, saying you
19 got to define your role in this process. You can't be going
20 back and forth.

21 JENNIFER CARR: This is Jennifer Carr for the record.
22 That's actually a key question that maybe we could dig into a
23 little bit, because you know, typically, with the petitions you
24 see coming before you, NDEP has initiated them. We've done all
25 the legwork, we've done all the homework to do all the

1 research, and it's our petition. In this case, as Paul
2 described, that wouldn't necessarily be the case.

3 We would certainly -- you know, all the information
4 we have, our water quality data, all of our permitting records
5 for discharges are public record. Within Division of Water
6 Resources, all the water rights, the agricultural withdrawals,
7 all those sorts of records are available as public records
8 through Division of Water Resources.

9 So there's a lot of public information that the
10 petitioner could collect from the agencies that we would be
11 obligated to provide anyway. So we would -- early on, we view
12 our role as, you know, helping to provide information.
13 Ourselves, you know, any of the other state agencies that
14 might -- that would, you know, have a, you know, some piece of
15 information that the applicant might want.

16 But from there, actually, we really would kind of
17 like to hear from you folks as to, you know, do you feel like
18 at that point, the petitioner should hand it off to NDEP and we
19 work it into our regulatory agenda and find the resources? Is
20 that an appropriate use of state funds?

21 We've heard some stakeholders say no, it should be
22 the responsibility of the petitioner. And on the other side,
23 you know, should the petitioner take it all the way through the
24 process, and then as Paul has described it, then, you know, the
25 petitioner is doing all the work and writing the regulation.

1 And we sit over here more as staff to the commission, saying,
2 you know, we've vetted the science. We've, you know, gone
3 through it with a fine-tooth comb and this is our
4 recommendation to the commission, or to, you know, approve/deny
5 2.53, whatever the case may be.

6 So there's kind of two different paths there. I
7 mean, so any input would be appreciated.

8 TOM PORTA: But wouldn't you be doing 70 percent of
9 the lifting anyway if somebody comes in, because you're going
10 to have to review all this information anyway? And then, make,
11 obviously, a recommendation to us, right, on the petitioner's
12 request.

13 JENNIFER CARR: You know, I think there's a --
14 Jennifer Carr for the record. I think there's a difference
15 between creating and reviewing. So that's probably where one
16 of those lines might be drawn.

17 TOM PORTA: Yeah. But there's still a significant
18 amount of time --

19 JENNIFER CARR: Yeah.

20 TOM PORTA: -- you all are going to have to invest in
21 it, right?

22 JENNIFER CARR: To support the commission's
23 decisions.

24 TOM PORTA: Yeah.

25 JENNIFER CARR: Yes.

1 TOM PORTA: Yeah.

2 JENNIFER CARR: We view that we have some role
3 there --

4 TOM PORTA: Right.

5 JENNIFER CARR: -- in order to support the -- when
6 this comes back to a classification hearing, you know, provide
7 you that expertise. Yes.

8 KATHRYN LANDRETH: Mr. Chair, I know that
9 Commissioner Wasley wants to talk, so I will keep this short.
10 But I think that's something that I would really want you to
11 focus on because it almost seems adversarial when I don't think
12 it should be. This is a proposed public benefit or we wouldn't
13 be doing it. And so to put the onus on perhaps a private
14 citizen to gather a substantial amount of data. And then
15 there's a provision even that the costs have to all be borne by
16 the nominator, I've got concerns about.

17 I'm going to shut up now and let our other
18 commissioners --

19 TOM PORTA: Well, did Jocelyn have any further
20 questions?

21 JOCELYN TORRES: I think that last one was my last
22 point on here, just with the costs being all on the petitioner,
23 sort of within the second phase. Again, if it's information
24 that we already have and then we're asking them to spend a
25 significant amount of time and resources to get the information

1 that we have available. And this was my original question,
2 too. If it's, you know, (indiscernible) nominating, then are
3 they then paying? And we're sort of paying, you know,
4 ourselves within the government to do some of this work. So I
5 feel like that gets really complicated if we're allowed -- if
6 these offices are allowed to nominate, too.

7 And that was my last point. Thank you.

8 JENNIFER CARR: Thanks.

9 SHERYL FONTAINE: Kacey KC was up.

10 TOM PORTA: Oh, Kacey. Kacey, you're next.

11 KACEY KC: I have a lot of the similar questions that
12 have come up, so I'm not going to re-repeat them. I just had a
13 question that popped up, and then I had more of a statement.
14 The petition, that was a little bit of the confusion in my
15 mind, is whether NDEP was actually petitioning like we've seen
16 before or whether, I mean, I know someone is saying, hey, I
17 petitioned, I want this to be listed, they're requesting it.
18 But can any group also request that of the commission? Like,
19 could NDEP be the one petitioning as to list? That was one of
20 the questions.

21 And then, I -- all the other questions, as earlier, I
22 don't think that the 30 days for the commission is going to be
23 adequate. This is a lot of information and pulling times and
24 schedules together. It's something that we have. We have a
25 petition under our statute for state protective plant species.

1 And 30 days is not adequate to go through this kind of data to
2 see if it's adequate -- there were lots of words in this thing
3 -- and to get through a regulatory process or to adequately say
4 we've reviewed your -- what you've sent us and we don't think
5 that this waterway needs to be listed.

6 So I think we should look at maybe an extension of
7 time there. And I also think, you know, words like "adequate",
8 this was already brought up, but you know, we need to make sure
9 that those are -- I understand your response of, like, it could
10 be adequate water data, it could be different for different
11 waterways. But there needs -- maybe in NAC, maybe in some kind
12 of guidance somewhere, because we as commissioners won't know
13 what is adequate for those waterways if there isn't some
14 guidance on that for us to judge by.

15 PAUL COMBA: Paul Comba for the record. Thank you,
16 Kacey. To your first question, would NDEP bring forth a
17 nomination to classify a water as an EAW, yes, that would be an
18 option. You know, we believe in this process, so we think
19 there are water bodies out there within the state that deserve
20 a higher level of protection.

21 The 30 days, I'm not sure if counsel's on this
22 morning. That was actually something that was kind of
23 internally discussed with Sheryl, and I believe she reached out
24 to counsel for the SEC. That decision that we kind of talked
25 about, Jennifer kind of expanded on, where when that petition

1 would come in and a decision was made to put it on the agenda
2 for the next SEC meeting, that would actually qualify as
3 initiating a rulemaking proceeding. And please correct me if
4 I'm wrong on that.

5 So that would mean you've met that requirement.
6 Changing it in the NAC 445B would be easy, but 445B is based on
7 a statute already. So that statute has the same 30 days to
8 initiate rulemaking proceedings. That would require a
9 legislative action. But putting it on the next SEC agenda, you
10 know, satisfies that 30 days to act on it, initiate rulemaking
11 proceedings. It may be the next hearing is not until 90 days.
12 But something has -- some decision has been made by the SEC to
13 agendize it on the next meeting.

14 And I think we kind of, you know, heard and, as far
15 as, you know, certain adjectives that we have in the rule right
16 now need to be better defined.

17 KACEY KC: And if I could just clarify again, yeah,
18 thank you for that. As to the 30 days, I understand the
19 rulemaking process on, you know, when we're going to have
20 workshops or hearings, that there is a 30-day notice. It seems
21 as though those things don't need to be tied, but I'm not a
22 legal -- law, writer of law, nor am I a very great interpreter
23 of them.

24 It seems like what this is saying is that once a
25 petition comes in from an outside entity or from NDEP, if

1 you're the proposer, this commission would have 30 days to say,
2 so that whether we met or not, not just to put it on the next
3 agenda but to -- so you could. You could initiate the
4 proceedings, or you can deny the petition. And that, just
5 having my own set of regulations that also restricts me to 30
6 days on the denial, it's fairly hard to pull together a good
7 denial, if you are going to deny, in that time frame, and to
8 push it onto an agenda where -- I know you have the 30-day
9 window for the rulemaking.

10 But I think that just a little bit more time to
11 review this amount of data would actually help this commission
12 to make a good, informed decision rather than kind of rushing
13 into something ad hoc. It's just a thought I had.

14 JENNIFER CARR: Thank you, Kacey. Jennifer Carr for
15 the record. And that first petition, that first decision
16 within 30 days, I agree. You know, deciding to deny something
17 should be thoughtful, certainly. So I would imagine if
18 something were denied in those first 30 days, the chair and the
19 executive secretary would look at the application, just go, you
20 know, this is just wholly insufficient. There's not enough
21 information here for me to even really understand what they're
22 proposing. That might be a basis for denial within the first
23 30 days.

24 Absent that, I would imagine that it would probably
25 then be at least approved to go on to the next SEC agenda

1 within that first 30-day period. It seems like that bar would
2 have a lot to do with the application, which is part of the
3 discussion. It's like, what do you think the minimum should be
4 for that first application in order to have the chair be able
5 to make the decision whether or not to put it on an agenda, so.

6 TOM PORTA: Anything else, Kacey? Thank you. Tony
7 is next. Tony?

8 TONY WASLEY: Thank you, Mr. Chair. I was originally
9 going to ask a process question as far as this workshop, but I
10 think I'll just make some assumptions and make some general
11 statements, and then maybe offer some suggestion or ask a
12 question.

13 But I just kind of want to -- you know, I've
14 been -- this is my tenth year on the State Environmental
15 Commission, and the Director of the Department of Wildlife is
16 statutorily named to the commission. And this is probably one
17 of the most Department of Wildlife-related issues in that
18 ten-year period that I think has come before the commission.
19 At least as I see it.

20 And my agency's statutory charge is to take care of
21 all the species for all the citizens. And that's about 900
22 unique species, commonly occurring species in the state. A
23 hundred and seventy-three of those are fish species,
24 twenty-four amphibians, and there's twenty-seven species in the
25 State of Nevada that are listed under the federal Endangered

1 Species Act, most of which are aquatic. Most are fish, desert
2 fishes.

3 That 173 fish and 24 amphibians doesn't include
4 mussels, clams, snails that are also clearly aquatic organisms.
5 So we can't manage the species, all the species for all the
6 citizens, independent of their habitat needs. So clearly, you
7 know, water is an issue in the desert. Nevada is the driest
8 state in the country. Water is hugely valued, and as a result,
9 you know, there's a lot of debates due to that scarcity.

10 There's some legacy impacts. And we'll hear from I
11 think a number of interests in industry here today. We've got
12 legacy mining impacts affecting water quality, legacy
13 unregulated grazing impacts and sedimentation and
14 nutrient-loading. Appropriation, issues of appropriation,
15 adjudication, and we're presently in the worst drought that
16 we've experienced in at least the last 1,200 years.

17 So it was encouraging to me to hear Director Crowell
18 talk about, you know, modern and proactive approach. And I
19 apologize that my agency hasn't been more proactive in engaging
20 on this issue. We've been remiss. It really wasn't even
21 something that was on our radar until the support material came
22 out for this meeting.

23 So I've heard other states, and what other states are
24 doing, what other states might have brought up a lot. And I
25 just want to share, back in 2014, I was on a panel, a water

1 panel, a water forum with Idaho and Texas and Colorado. And
2 the uniqueness of Nevada in terms of what we regulatorily have,
3 or in-stream flows, minimum pool requirements, for the benefit
4 of aquatic organisms and outdoor recreation, is minor relative
5 to what exists in many adjacent states.

6 Again, I think that goes back to the scarcity of
7 water, the history of our state, the importance of that water
8 for agricultural uses and other uses. I would just like to say
9 the Department of Wildlife will strongly support any modern and
10 proactive measure that's going to assist in ensuring clean
11 water, thriving wildlife, or secure populations of fish and
12 other aquatic organisms, and assist in economic diversification
13 through outdoor rec opportunities.

14 And we kind of look at this regulation as a floor, a
15 quality floor, a minimum standard, if you will, for those
16 designated waters. And I think there's two aspects of the
17 draft regulation that have a really strong nexus to the
18 Department of Wildlife statutory authority, the first being
19 that ecological value.

20 And I know a lot of the conversations that we're
21 having here about water quality and thinking about maybe water
22 quality from a human consumption standpoint. But again, 173
23 fish species, 24 amphibians, umpteen snails, mussels, clams.
24 So the ecological value can't be overstated. And then, the
25 recreational value, clearly there's a subset of those fish

1 species that have recreational value and interest.

2 When I think about an EAW, and you know, in the
3 presentation, there were a couple hypotheticals put forward.
4 One is, you know, the Humboldt River, would the Humboldt River,
5 you know, measure up, or Cave Lake. And I think those are two
6 extremes that are probably a good way to frame up some of these
7 conversations.

8 And the Humboldt River for the most part is already
9 significantly degraded. The floor is already a pretty low
10 floor in most places. Cave Lake, some of the discussion in the
11 presentation addressed the lack of risk or lack of threat. And
12 so I would ask, you know, so what value is there in protecting
13 something where there is no threat.

14 We've got approximately 2,500 streams, 550-plus
15 reservoirs, untold numbers of springs with spring fish and
16 snails. I think a lot of what we're going to hear today is
17 going to be from people who have an interest in this, either
18 driven by or motivated by a sense of optimism in providing
19 protective measures for those waters or a sense of fear by what
20 they may lose.

21 And if our focus is on waters where there exists no
22 risk, you know, I think about the idea of win-win equals no
23 meaningful outcome. And not suggesting that somebody's ox
24 needs to be gored here, but I'm excited by the opportunity of
25 setting a minimum standard or having this opportunity for

1 certain waters that meet whatever standard it is that we
2 determine for an EAW.

3 And I -- we're talking right now about this
4 nomination process on one end and then coming before the State
5 Environmental Commission on the other end. And one of the
6 questions I wanted to ask was about the possibility of having a
7 interdisciplinary or interagency team that could bring various
8 perspectives to life and kind of exist somewhere between the
9 nomination and this commission.

10 Clearly, we would need more clarity in the regulation
11 in terms of the definition and the standards that we're trying
12 to maintain or obtain. But I know that the authority exists
13 within DCNR, NDEP. I'm curious if there is an opportunity for
14 interdisciplinary or interagency engagement that could
15 streamline some of the process from nomination to then
16 recommendation before this body. Thank you, Mr. Chairman.

17 TOM PORTA: Jennifer or Paul, would you like to
18 respond to Tony's --

19 PAUL COMBA: Paul Comba for the record. I just want
20 to acknowledge Commissioner Wasley's recommendation of this
21 interagency team. I think that's a great idea, something that,
22 you know, we haven't really considered. And it's certainly
23 worth pursuing a little bit more. It may be a solution, what
24 we're looking for.

25 TOM PORTA: And I would say in regards to step one of

1 your proposed process, thank you. I don't know if you would
2 want one person making that type of decision. Or maybe
3 something which Tony has suggested might be a better approach,
4 giving the thumbs up or thumbs down.

5 JENNIFER CARR: The first 30-day decision has to be
6 made --

7 TOM PORTA: Yes.

8 JENNIFER CARR: Giving you some support?

9 TOM PORTA: Yes.

10 JENNIFER CARR: Yes.

11 PAUL COMBA: Well, maybe one thing if you don't mind
12 me adding --

13 TOM PORTA: Sure, Paul.

14 PAUL COMBA: -- Chairman Porta. Is that 30 days when
15 a decision has to be made or is that 30 days saying, okay,
16 we're going to engage this interdisciplinary
17 agency -- interagency team?

18 TOM PORTA: Perfect.

19 PAUL COMBA: That we've accepted your nomination.
20 It's going to be on a -- we're saying maybe an SEC agenda 90
21 days down the road.

22 TOM PORTA: Well, Asheesh can back me up here, but I
23 believe it's when the petition is submitted to the secretary,
24 the clock of the 30 days starts. Is that correct, Asheesh?

25 There he is.

1 ASHEESH BHALLA: Yes, sir. I would concur with that
2 interpretation.

3 TOM PORTA: So once we receive that, Sheryl would
4 receive the petition, the clock starts that day. That's why
5 she emailed me immediately, you know. And I said, well,
6 contact the parties. We'll need an extension to do it. And
7 that's pretty much 99 percent of the time the way these things
8 work, that there's an extension granted as long as both parties
9 agree, and then we set a date down the road.

10 Okay. Any other questions from commissioners? Sure.
11 Who is it, Sheryl?

12 SHERYL FONTAINE: It's Ms. Ott, Jennifer.

13 TOM PORTA: Okay, Jennifer. Go ahead.

14 JENNIFER OTT: Thank you, Chairman, for hearing from
15 me again. I appreciate it. I'd like to go back to Deputy
16 Administrator Carr's question about the process. And just,
17 want to just ask a question back that might -- and I understand
18 the perspective of not putting the work on the petitioner. But
19 in recognition that the State currently sits at about a 20 to
20 30 percent vacancy rate, what does that kind of workload do for
21 NDEP as far as being able to address these petitions as they
22 come in?

23 Because you know, if the information already exists,
24 great. I think that that is, you know, appropriate. But if
25 we're talking about NDEP then taking on a workload, I think

1 that it's fair to sort of put that back on them and ask about
2 would this require a budgetary ask through the next session?
3 Would this, you know, what kind of work would that require from
4 the Division? Thank you.

5 JENNIFER CARR: This is Jennifer Carr for the record.
6 That was a great comment. Thank you for following up on that,
7 because those are some of the concerns that were expressed. We
8 are running at about a 18 percent vacancy rate right now. But
9 fortunately for Paul, his program seems to have maintained a
10 pretty good staffing level. Everybody loves working in that
11 program. Don't have much turnover there.

12 But it's absolutely real. I mean, a vacancy can
13 happen at any time. And how it fits into the workload would
14 certainly need to be considered by the Agency if we were asked
15 to champion the petition. It would probably need to work into
16 our triannual review process and -- which wasn't particularly
17 palatable to some of our stakeholders. They wouldn't
18 necessarily want to wait.

19 But we may have other priorities for things that
20 maybe are protecting other resources or reasons for, you know,
21 you're going to hear about selenium again soon, right? You
22 know, that's something that we're working on for other reasons.
23 And so anything that the Agency would need to work on, I agree,
24 it would need to be carefully weighed as a resource impact.
25 Thank you for that comment.

1 TOM PORTA: Anyone else? Adam, go ahead.

2 ADAM SULLIVAN: I want to bring up the questions
3 around water rights and water law. You did a really good
4 explanation of what this regulation would do around folks on
5 anti-degradation and water quality and discharge into the water
6 bodies. But nevertheless, there seems to be a sort of
7 persistent question of how this would potentially change water
8 law or potentially affect existing water rights. And you know,
9 there's a statement in here that pointed out, you know, it's
10 clearly stating the intent that the classification does not
11 affect a provision of Title 48 or any rule, regulation, or
12 (indiscernible).

13 Since that seems to be a persistent concern, I wonder
14 if there's an opportunity to give more assurances? Or maybe in
15 that first level of review, emphasizing that, you know, that
16 box is checked. And something that comes to mind, a specific
17 case, is would a petitioner be able to suggest or petition for
18 a minimum in-stream flow or a minimum stage in the lake or some
19 quantitative measure that may inadvertently have some potential
20 conflict with existing rights?

21 PAUL COMBA: I'll go ahead and start.

22 JENNIFER CARR: Go ahead.

23 PAUL COMBA: Thank you, Commissioner. So then, let
24 me start with the last question you had. That has never been
25 the intent of this process for classifying waters as EAWs. You

1 can't -- it can't be used to ensure the in-stream -- consider
2 an in-stream flow. It can't be used to prevent future
3 withdrawals. Throughout the current NAC language and even in
4 our NRS, there's statutory language that's similar language
5 that's in the proposed rule right now that's interspersed
6 throughout our whole regs.

7 Any water quality standard action we take, whether
8 it's adopting, amending the water quality standard or amending
9 policy, cannot get sideways with Chapter 48 --

10 TOM PORTA: Yeah.

11 PAUL COMBA: -- in adjudication.

12 TOM PORTA: And I'll add it's in the Clean Water Act.
13 And so that's why it's immersed in the statutes and
14 regulations. It's actually in the Clean Water Act that it
15 can't interfere with State's water resources.

16 PAUL COMBA: Yeah.

17 JENNIFER CARR: But -- this is Jennifer Carr for the
18 record. That is absolutely what snarled things up last Friday
19 when this petition went to the regulatory commission to review
20 regulations. Because there is a requirement that a regulation
21 be processed within two years of being proposed. And so this
22 number that we have that's in all the documentation, our
23 119-20, indicates that this was proposed in 2020. We're now in
24 2022 and we haven't gotten it done yet because of all of the
25 engagement that we've been, you know, doing.

1 So Greg on Friday had to go to the legislative
2 commission and ask for permission to extend that timeframe to
3 go beyond two years. That experienced a vote of six to six, so
4 that request for extension died. And so -- and the discussion
5 that led into that vote was just what you described. It was
6 one of the -- one of our senators concerned about how this
7 could impact water rights, particularly agricultural water
8 rights.

9 And you know, it wasn't the venue to dig into content
10 of what we're doing. It was merely a request for an extension
11 of time for the process. But due to the way that hearing
12 unfolded, the other like-minded senators and assembly people
13 voted against it. So we had a six to six. There we go. So we
14 do know -- I mean, that was a clear indication to us that I
15 think we do need to make sure that this is very clear going
16 forward, in all of our presentations and our testimony and our
17 regulatory development, that this is not intended to impact
18 water rights.

19 If you're wondering what happens now because this
20 has -- is passing the two-year statutory -- or the requirement
21 to process in two years, what we will do before the end of this
22 month is take the comments that we've received, green line it
23 some more, take your input, and resubmit to LCB before the end
24 of this month and get a new R number.

25 So going forward, when you hear it again in the fall,

1 it'll have a different R number, but it will have the same
2 history. So little side note there, but it's tied to that
3 water rights question.

4 TOM PORTA: Go ahead, Greg.

5 GREG LOVATO: Thanks, Commissioner. Greg Lovato for
6 the record. So I just want to add that that's part of the
7 reason, you know, we're before you today is that, you know, I
8 think there's a number of issues of concern that stakeholders
9 want to make sure get addressed. You know, in terms of
10 notification, in terms of -- you know.

11 And so we're trying to anticipate, you know, those
12 concerns, like will water rights be affected. Yet at the same
13 time, that has this flip side of, you know, suddenly creating a
14 burden for a petitioner to have to go research and reach out to
15 all water rights holders and have that information available
16 before they know if the commission is even serious about, you
17 know, considering this.

18 So there's sort of a balancing act I think we see
19 here. But I think if we can kind of clearly lay out, you know,
20 and I think through the process we have. And I don't think
21 that -- you know, and you'll hear from the stakeholders later
22 that among the stakeholders that have been engaged with us,
23 there's a serious concern that this could affect water rights.
24 And so I think hearing from, you know, all the folks who have
25 been involved who have different perspectives, that that will

1 be protected, that may help to understand.

2 But I think it's also who collects that information,
3 when is it presented, where is the burden is kind of what we're
4 trying to figure out, too. We think definitely it needs to be
5 presented by the time it comes for, you know, actual
6 rulemaking. It's just should it be presented earlier. And
7 then, you know, where's the burden of the work there.

8 ADAM SULLIVAN: That's really helpful. And I
9 completely understand your explanation. And I'm thinking maybe
10 if there's some really upfront clarity about what the standard
11 would -- and most of the conditions that you've described are
12 not things that would require water rights or would interfere
13 with the water rights, because we're not talking about any sort
14 of diversion or those other examples of the minimum flow,
15 minimum stage.

16 But perhaps some more upfront clarity to allay those
17 concerns because they do seem so persistent. I guess
18 establishing what would require review and approval through the
19 provisions of Title 48, something like that.

20 TOM PORTA: I guess let's say down the road this has
21 all passed and you -- the commission adopted and approved an
22 EAW Tier 3 water, which cannot have a discharge to it. But if
23 somebody wanted to exercise a water right and remove water from
24 that EAW and potentially cause degradation, I think that's kind
25 of the point, too, that, you know, it can't be stopped from

1 doing that even though the EAW water may be degraded as a
2 result of that diversion or water right exercise.

3 And then what do we do? You know? How is that
4 handled? I mean, technically, again, I think the Clean Water
5 Act mirrors the same language that's in our NRS about our water
6 quality and water resources. There's nothing you could do.
7 And then that water may drop off an EAW list because of a water
8 right being exercised. Potentially.

9 JENNIFER CARR: That's a good scenario. Yeah.

10 TOM PORTA: But nobody -- I mean, I guess from (in
11 perspective, no one can stop that person from exercising their
12 water right with an EAW designation. I mean, that's the way I
13 envision -- you know, read the Clean Water Act and our statutes
14 and so forth. But unfortunately, it'd be at the expense of the
15 EAW, potentially, if that did happen.

16 JENNIFER CARR: Yeah.

17 PAUL COMBA: Right.

18 JENNIFER CARR: One of the ways I've described it to
19 people before is that our charge is to protect water where
20 water exists. Your job is, you know, the DWR's, to decide
21 where the water exists and who gets to use it. So if there's
22 no water, then our -- then we're not -- then, you know, then
23 our job is, you know, we don't have a job. So the water has to
24 exist, and then the water quality regulations kick in. And so,
25 you know, if a withdrawal in that scenario even caused the

1 water to no longer exist, then these regulations would no
2 longer have effect.

3 TOM PORTA: And maybe that needs to be a little
4 clearer, I think Adam's point, in the regulation, that people
5 understand that.

6 JENNIFER CARR: Thanks.

7 TOM PORTA: Anything else, Adam?

8 ADAM SULLIVAN: No.

9 TOM PORTA: Okay. Any other commissioners have
10 questions?

11 SHERYL FONTAINE: I don't see any.

12 TOM PORTA: Just me? Okay. Well, I tell you what.
13 Why don't we -- it's getting close to the noon hour. I'll ask
14 my questions and then we think we have about an hour of
15 testimony that needs to be from the public. Maybe we'll take a
16 short break. I'll ask the commissioners now, if we take a
17 short break after my questions for a bathroom break, snack
18 break, and then reconvene versus a lunch, would that be
19 acceptable?

20 I got Adam and Kathryn nodding. How about you folks
21 online? Maybe they're already at lunch.

22 JENNIFER CARR: That's okay with me.

23 TOM PORTA: You guys can have your lunch.

24 SHERYL FONTAINE: They just have to turn their
25 cameras off.

1 TOM PORTA: Yeah. Yeah. Okay. So that's the way
2 we'll proceed. So I guess my first question is, you know, I
3 have a little background in this area. And most of our waters
4 in Nevada are heavily modified. You know, diversions, dams, et
5 cetera. Man-made lakes. And they're -- you know, California
6 only has two water bodies designated. You know, I can't even
7 imagine, like, the Merced running through Yosemite not being
8 designated or something like that.

9 How many waters -- realistically, Paul, you said Cave
10 Lake, Tahoe. But realistically, for all this work we're doing,
11 you know, how many waters possibly in Nevada could be put into
12 this 2, 2.5, or 3 tier? I mean, it's got to be on one hand,
13 the number.

14 PAUL COMBA: I would agree, Chairman. It would be
15 very select. You know? And yes, are we doing a lot just to
16 bring Lake Tahoe in as an EAW?

17 TOM PORTA: Yeah.

18 PAUL COMBA: And that's the valid question.

19 TOM PORTA: Right. Versus just maybe carving out
20 Lake Tahoe and --

21 PAUL COMBA: Right. But part of a state's anti-deg
22 program is there has to be some process to basically say which
23 waters go in those higher tiers, so.

24 TOM PORTA: Right. Which I guess would bring me to
25 RMHQs. Correct me if I'm wrong, but don't we have RMHQ values

1 in our state and NPDS permits now to some degree?

2 PAUL COMBA: Yeah.

3 JENNIFER CARR: To some degree.

4 TOM PORTA: So they are protecting waters from
5 discharge to some degree right now, even though it's not as
6 formal because -- but they are in permits?

7 PAUL COMBA: Correct.

8 TOM PORTA: Right.

9 PAUL COMBA: For certain individual water quality
10 parameters in certain water bodies.

11 TOM PORTA: Yeah. Yeah. And you know, potentially,
12 that RMHQ program could be expanded, right, to make it more
13 definitive versus this other tier route. I mean, I'm
14 just -- you know, this is kind of a back and forth. I'm just
15 kind of throwing these things out. Since we have a limited
16 number of waters EAW may be subject to, would it make more
17 sense maybe just beefing up the RMHQ process in lieu of, you
18 know, this whole process with EAW? You know, again, I'm just
19 kind of -- did anybody bring that up in your comments when you
20 were asking, you know, for the public's input?

21 PAUL COMBA: I think the comments -- Paul Comba for
22 the record. Mr. Chairman, I think the comments were more
23 related to, well, the RMHQ program exists. It's existed for
24 50, 60 years.

25 TOM PORTA: Right.

1 PAUL COMBA: Why are you proposing to change it? And
2 I think we've heard that. I think we are doing -- proposing to
3 do exactly what you alluded to to expand the program. Where if
4 it's a Tier 2 parameter to be protected and RMHQ would be
5 developed for that parameter.

6 TOM PORTA: Right. Right. Because those are for,
7 like you've put in your slide here under the need and purpose,
8 for extra protection. And that's exactly what the RMHQs are
9 designed to do. So --

10 PAUL COMBA: Right. That --

11 TOM PORTA: -- again, I'm just throwing this out.
12 You know, does it make more sense to beef up the RMHQ
13 regulation and requirements and permits and so forth than to go
14 down this EAW path? That's all I'm saying.

15 JENNIFER CARR: So Jennifer Carr for the record.
16 Part of what you're talking about is in the other piece of this
17 regulatory petition, on the anti-degradation side. So if
18 someone wanted to propose a discharge to a water body that
19 maybe doesn't have RMHQs or enough data yet, that discharge
20 permit applicant would be required to go out and get data, a
21 sufficient amount of data, potentially quarterly data for five
22 years, in order to establish an RMHQ that would then go in that
23 permit. So that's on the anti-deg side.

24 So that will continue on through the permitting
25 process through the anti-deg program that we'll talk a lot more

1 about in the fall when we come back. I think a lot of the
2 question on the EAW is you know, what do Nevadans, all of us in
3 this room and elsewhere, what do we consider to be our highest,
4 most unique waters that deserve maybe not just RMHQ protection,
5 but maybe prohibition from discharge in the future because
6 they're just so valuable that we don't even want a discharge
7 permit considered in this water body.

8 So that's the difference between the RMHQ and what
9 could potentially be this EAW process.

10 TOM PORTA: Okay. And I would think -- you know, the
11 only water that I would think could possibly come into mind are
12 some headwaters. Anything in the valley, again, so modified
13 that it's just not realistic to look at this.

14 Oh, so in 2.5 tier, discharges potentially would be
15 allowed. Would there be a mixing zone, I'm assuming, if, you
16 know, discharge, you're wanting to do?

17 PAUL COMBA: As it is proposed right now, Mr.
18 Chairman, no. That would be the distinction between a 2.5 and
19 a 2, is --

20 TOM PORTA: Okay. So there would be no mixing zone
21 in 2.5? They'd have to meet the RMHQ when it comes out the end
22 of the pipe?

23 PAUL COMBA: Right. Correct.

24 TOM PORTA: Okay.

25 PAUL COMBA: Well, not out the end of the pipe.

1 TOM PORTA: Well --

2 PAUL COMBA: We've heard this --

3 TOM PORTA: They can't change the water --

4 PAUL COMBA: Right.

5 TOM PORTA: -- quality, whatever is coming out of the
6 pipe.

7 PAUL COMBA: Yeah. It could be wherever that water
8 quality is, the criteria are set for that segment, possibly.
9 And I'm just going to stop right there because I have something
10 that we'll further discuss with our stakeholders.

11 TOM PORTA: Yeah. That's a big one.

12 PAUL COMBA: Yeah.

13 TOM PORTA: You know? So, okay. So getting back to
14 the data collection, and you know, I mean, I've been -- I
15 worked in your shop. That is a tremendous amount of resources
16 that's required. And even the State can't do all the sampling
17 that we need. We rely on dischargers, right, to do it? We
18 rely on research people to help us collect data. So it comes
19 from all over because the State simply doesn't have the
20 resources to do that.

21 And even some of the data we do get when you do your
22 triannual review may not be sufficient for whatever reason to
23 make a determination on a water body's status of whether
24 they're in compliance or, you know, should be put on the
25 impaired waters list, right? So you know, this is really huge

1 as far as the resource standpoint.

2 And you know, whether we stick it on the potential
3 petitioner to do this or NDEP, that's a lot. That's huge. And
4 right now, I've, you know, with everything the way it is,
5 I'm -- I don't imagine your budget could even come close to
6 helping with this and getting the data you need just to do our
7 waters now, I would assume. And now, we're going to add this
8 little bit of extra layer.

9 So again, I hope you guys looked at the resource
10 aspect of this and I know, you know, putting that on a
11 petitioner is huge. Is huge. So whether it's you all or, you
12 know, the applicant, it's got to be a lot of data over several
13 years. You know, somebody just doesn't go out and, you know,
14 get their sampling bottle in and, you know, couple of months,
15 come back and say we want an EAW on this water. I see that as
16 a very long-term investment from the sampling standpoint and
17 analysis.

18 Because there's some samples that have to be
19 excluded, right, because of natural event. You know, storms or
20 whatever. So you know, there's a lot to this. And I, Kathryn,
21 can't think of anybody that would have the resources. Even a
22 -- it would have to be somebody like the Sierra Club or
23 something come forward with data on their own to do this. I
24 would see it more in the vision of them reviewing the
25 Division's data that's on hand and using that data to try to

1 bring forward to an EAW.

2 I mean, do you kind of see that, too?

3 JENNIFER CARR: Yeah. Jennifer Carr for the record.
4 We would absolutely provide -- you know, our records are open
5 right now.

6 TOM PORTA: Yeah.

7 JENNIFER CARR: We would provide whatever data we
8 have. You know, if it's sufficient to support the proposal,
9 that would be great. If it's not, then we get into those other
10 questions that you're posing.

11 TOM PORTA: Yeah. Okay. Let's see. And I -- and
12 again, that -- I mean, your step process, with step one with
13 allowing myself or whoever my predecessor is to make that
14 decision, you know, I'm not that comfortable with that. That's
15 putting a lot of pressure on, you know, one person to make a
16 thumbs up or thumbs down call on this thing. And you know,
17 Tony's suggestion, I thought has real merit, coming from a
18 group of people, you know, championing something like this
19 versus one person, whoever sits in the chair, making the
20 decision.

21 JENNIFER CARR: Yeah.

22 PAUL COMBA: So thanks, Commissioner Porta. I
23 understand, you know, the reluctance. And we also heard from
24 Commissioner KC about, you know, whether there'd be adequate
25 time and --

1 TOM PORTA: Yeah.

2 PAUL COMBA: And so, I mean, I think what NDEP and
3 the staff tried to do is, you know, outside of the NAC 445A,
4 and even NRS445A, Administrative Procedures Act requires us, 30
5 days, right?

6 TOM PORTA: Yeah.

7 PAUL COMBA: So we're, you know -- yet, I mean, I do
8 hear, you know, some of the other commissioners talking about,
9 you know, early notification, early understanding of it so that
10 we know that there's certain red flag issues that are being
11 handled. So I think we hear what you're saying. We're trying
12 to balance out, you know, the requirement to act in 30 days
13 with the desire to make sure that we aren't surprising people
14 locally.

15 TOM PORTA: Yeah.

16 PAUL COMBA: And so I mean, that's what we're trying
17 to balance out here, but we understand the concern.

18 TOM PORTA: Sure.

19 PAUL COMBA: Jennifer, if you wanted to add.

20 JENNIFER CARR: Actually, yeah. I want to clarify
21 because I'm not sure we were a hundred percent clear on the
22 two-step process, because -- so let's just walk through it. If
23 Sheryl were to get a petition for an SEC Form 1 tomorrow,
24 within 30 days, we have to take some action. We
25 envision -- it's all -- this would be actually like step one

1 half. So it's even, we would envision, before the step one
2 that Paul described.

3 So within that first 30 days, all that would be
4 decided is whether or not the information on Form 1 was
5 sufficient enough to take it to a hearing. The two-step
6 process is actually a two-hearing process. So what the chair
7 would be asked to do in that first 30 days, potentially with
8 the support of NDOW, is to just look at the attachments and the
9 content of Form 1, and say is there enough here for the
10 commission to even consider this.

11 If the answer is yes, then the executive secretary
12 would put that Form 1 petition on the next SEC agenda. So if
13 it was received tomorrow and you thought it was sufficient, had
14 enough information to start the regulatory process, then we
15 would put it on the September agenda.

16 At the September meeting, the entire commission that
17 was present that day and a quorum would be able -- would have
18 all the material in advance. They would be able to dig into
19 the where, the what, the why. And then, again, be able to say,
20 yes, this has merit, keep going to the classification stage.
21 We agree with this nomination and let's keep it going.

22 And then, it would actually come back, after having
23 gone through other parts of the Administrative Procedures Act
24 with LCB drafting and everything, for official public
25 workshops. And so that would be the classification in step

1 two.

2 TOM PORTA: Right.

3 JENNIFER CARR: So it may sound kind of scary, but
4 the first thing that has to happen in 30 days is just to look
5 at the application to make that initial assessment of is
6 this -- you know, if someone --

7 TOM PORTA: Right. And Sheryl, you know, and I do
8 that --

9 JENNIFER CARR: Yeah. Right.

10 TOM PORTA: -- when these things come in because they
11 may have not have submitted something that doesn't comply with
12 the form or whatever. That's one thing.

13 JENNIFER CARR: Right.

14 TOM PORTA: That's more of a procedural aspect.

15 JENNIFER CARR: Right. That's -- yeah.

16 TOM PORTA: What you're asking myself and I guess my
17 predecessor to do is have -- I mean, I guess I'd have to have
18 some criteria to give the thumbs up or thumbs down on something
19 like this. And that's why Tony suggested possibly an
20 interagency group could help relieve some of that stress in
21 making a decision like that.

22 But in any event, that's step one or step half.
23 Myself or whoever I think have to have some better criteria
24 other than just procedural type things when we get a petition.

25 JENNIFER CARR: And we have talked about potentially

1 creating a different Form 1 or a more defined criteria for Form
2 1 --

3 TOM PORTA: Okay.

4 JENNIFER CARR: -- that has that specificity so that
5 there's at least a checklist of sorts when that initial
6 petition comes in from the requester, with, like, minimum
7 qualification. And so if you think an amended Form 1 would be
8 helpful, we could look at that, as well.

9 TOM PORTA: Yeah. I guess I'd have to defer to
10 Asheesh if we -- are we allowed to have two separate forms in
11 considering, you know, petitions or whatever before the SEC?

12 ASHEESH BHALLA: Thank you, Mr. Chairman. I think,
13 you know, the form issue is one, you know, I'd really have to
14 look into a little bit more carefully. But I do think that,
15 you know, we have some leeway here. It says the commission
16 needs to make a decision, and so, you know, these things don't
17 clearly split out the chair and the commission. And so I do
18 think it would be prudent to proceed with a group, that is, the
19 public body here, the commission itself, or you appoint some
20 sort of subcommittee to make that determination.

21 But there are sort of a range of options we can go
22 forward with as far as procedure. Regarding the form, I'd
23 really have to look at those.

24 TOM PORTA: Yeah.

25 ASHEESH BHALLA: But I don't know if it in the

1 regulation or statute, that would directly (indiscernible) with
2 that.

3 TOM PORTA: All right. So what you're basically
4 saying is I may not really have a authority to make that call.
5 The commission as a body would have to do that, potentially.

6 ASHEESH BHALLA: I think there's room for
7 interpretation. I concur with that sentiment, sir. The
8 regulation does say the commission, and so some of that power
9 can be devolved to you if really is reasonable --

10 TOM PORTA: Yeah.

11 ASHEESH BHALLA: -- within the structural
12 interpretation of the statutes and regulations. But the plain
13 text of the regulation says commission.

14 TOM PORTA: Okay. Thank you. I think that concludes
15 my questions for now. Any other commissioners want to -- or
16 have any other questions before we take a -- we'll take a
17 15-minute break before we get into the public comment?

18 Okay. It's about ten after. Let's meet at 12:25,
19 then. Thank you.

20 (Recess)

21 TOM PORTA: And we will proceed now with the public
22 comment period for -- I believe it's Agenda Item Number 6. We
23 have some letters that have been submitted. I think Jennifer
24 alluded to those. Truckee Meadows, City of Reno, Washoe
25 County, City of Sparks sent a combined letter, and the Farm

1 Bureau. And I think we'll read those at the end of the public
2 testimony for the record, to go in.

3 So I'd first like to start with -- wow, here's a
4 blast from the past. Doug Busselman from the Farm Bureau. If
5 you're on, go ahead, Doug.

6 SHERYL FONTAINE: He just has the letter.

7 TOM PORTA: Okay. He just wants the letter read.
8 Okay.

9 SHERYL FONTAINE: Yep. He couldn't make it today.

10 TOM PORTA: Okay. Then we have -- is it Christi
11 Cabrera, Nevada Conservation League?

12 CHRISTI CABRERA: Here. Can you all hear me okay?

13 TOM PORTA: Yes.

14 CHRISTI CABRERA: Great. Thank you so much. Good
15 afternoon, Commissioners. Thank you for your time today. My
16 name is Christi Cabrera and I'm the policy and advocacy
17 director for the Nevada Conservation League. As residents of
18 the driest state in the union, Nevadans place a high value on
19 our water resources and feel that protecting our land, air, and
20 water should be a priority.

21 Our waterways provide drinking water for millions of
22 people who are driving our (indiscernible) economies and
23 sustain fruitful habitat for species. The Clean Water Act
24 provides safeguards for the nation's most exceptional waters
25 and gives states the authority to ensure the quality of these

1 waters are not downgraded.

2 In waters designated by a state as an outstanding
3 natural resource water, ONRW for short, water quality must be
4 protected and maintained. This includes preventing or
5 restricting harmful land use practices that could degrade the
6 water quality of the designated water body.

7 States must first create an ONR designation process
8 that can be used to designate pristine waters within the state.
9 However, currently, Nevada lacks both a clear process to
10 designate high value waters as ONRWs, or as they're known here,
11 ecological or aesthetic waters. And they also lack a clear
12 policy to protect them once they are designated.

13 We are in strong support in Nevada. Adopting a
14 strong EAW policy, we've been working on it since I think 2019.
15 And we believe it'll give meaningful protections to prevent
16 degradation of some of our state's most outstanding waters.

17 We did have some concerns with components of the most
18 recent draft of the regulations. And we believe some of the
19 requirements in the nomination process would be excessively
20 burdensome and we worry it would discourage members of the
21 public from seeking to protect some of our state's most
22 outstanding waters. The public must have an accessible way to
23 admit waters as EAWs so that current and future generations of
24 Nevadans can enjoy our state's most extraordinary water
25 resources.

1 Protection of Nevada's most valuable water bodies is
2 vital to our state and their way of life. We'd like to thank
3 the Nevada Division of Environmental Protection for their work
4 on these regulations. We strongly support NDEP developing a
5 program that will allow for increased protection through an EAW
6 designation process and we hope to get this program up and
7 running in the near future.

8 With that, I'm happy to take any other questions or
9 pass it on to other public commenters.

10 TOM PORTA: Do the commissioners have any questions
11 for Ms. Cabrera?

12 So seeing none, all right, thank you. Our next
13 commenter is Rachel Hamby.

14 RACHEL HAMBY: Hi, there. Can you hear me all right?

15 TOM PORTA: We can hear you.

16 RACHEL HAMBY: Great. Thank you. Good afternoon,
17 commissioners. My name is Rachel Hamby and I'm a senior policy
18 analyst with Western Resource Advocates, a regional nonprofit
19 with a Nevada office in Carson City, which works to protect the
20 West's land, air, and water. Thank you for the opportunity to
21 offer some comments on proposed regulation R119-20, and I want
22 to also thank and commend the staff of the Division of
23 Environmental Protection for their tremendous work on this
24 issue.

25 Nevadans cherish our streams and rivers, which hold

1 special significance in an arid environment. These waters
2 provide irreplaceable habitat for fish and wildlife and
3 unparalleled recreation for Nevadans. Some of Nevadans --
4 sorry, Nevada's streams and rivers deserve to be protected from
5 degradation to preserve these existing qualities for
6 generations to come.

7 The federal Clean Water Act requires states to adopt
8 an anti-degradation policy and procedures which provide for the
9 protection of waters that constitute an outstanding national
10 resource, such as waters of exceptional recreational or
11 ecological significance. While this is a federal requirement,
12 states are given the opportunity to develop and implement
13 antidegradation policies and procedures as long as they meet
14 the minimum federal requirements.

15 As you heard from Deputy Administrator Carr earlier,
16 other western states have successfully complied with this
17 requirement and have adopted and used policies and procedures
18 to protect high value waters from degradation. We are pleased
19 that Nevada is now initiating this process so that Nevadans can
20 have an accessible and transparent way to nominate waters of
21 ecological, aesthetic, and recreational significance, or EAWs,
22 to be considered for this additional level of protection.

23 An appropriate, well designed EAW process should
24 provide a straightforward way for members of the public to
25 identify and nominate waters for protection, and to ask the

1 State Environmental Commission to designate and safeguard them.
2 The process should focus on making a case for protection that
3 is relevant to the values that qualify a water for EAW
4 protection, whether that be high water quality or ecological,
5 aesthetic, or recreational significance. The information
6 requested in the proposed regulation, Section 2, Subsection 3,
7 items 1 through 5, is generally consistent with these
8 qualifying values.

9 However, in order to be accessible to the public, the
10 process should not be unduly burdensome. In particular, it
11 should not ask that members of the public undertake data
12 gathering and expert analyses that are beyond their resources
13 or expertise, and certainly should not require this as a
14 threshold before the public can even present a nomination to
15 the SEC for consideration.

16 It also should not require the public to anticipate
17 and resolve any and all hypothetical future conflicts or
18 incompatibilities between the proposed EAW designation and
19 potential water land uses that might be proposed in the future.
20 The information requested in the proposed regulation, Section
21 2, Subsection 3, items 6 through 9, strays beyond the values
22 that qualify a water for EAW protection and presents an
23 unreasonable barrier to the public bringing nominations to the
24 SEC for consideration and discussion.

25 It is important to emphasize that a nomination is not

1 the end of the conversation, but the beginning. Before
2 designating a water as an EAW, the SEC will hear from
3 stakeholders and can gather additional information if needed.
4 It is ultimately up to the SEC to approve a nomination.

5 Again, we are excited that Nevada is working on this
6 policy and are supportive of the EAW concept. We want to
7 ensure that Nevadans have an accessible and transparent path to
8 nominate our highest value waters for this additional
9 protection so that future generations can enjoy their benefits.
10 We appreciate the Division of Environmental Protection's hard
11 work on this issue, the Commission's consideration of this
12 proposed regulation, and the opportunity to offer comments on
13 behalf of Western Resource Advocates. Thank you.

14 TOM PORTA: Thank you, Ms. Hamby. We have a little
15 issue with your audio. Would you mind submitting your comments
16 to our executive secretary, Sheryl? You could probably email
17 them to her so we have it for the record to make sure our
18 record is clear.

19 RACHEL HAMBY: Absolutely. I'd be happy to do that.
20 Thank you.

21 TOM PORTA: Okay.

22 SHERYL FONTAINE: Chairman, the other suggestion for
23 future speakers, we think if you lower the volume on your own
24 computer, that that might help it come through a little
25 clearer.

1 TOM PORTA: Okay.

2 SHERYL FONTAINE: We can try that.

3 TOM PORTA: Okay. All right. Thank you, Ms. Hamby.

4 Our next commenter is Pam Harrington.

5 PAM HARRINGTON: Everybody, can you hear me okay?

6 TOM PORTA: We can hear you.

7 PAM HARRINGTON: Thank you, Chairman and
8 commissioners for allowing us to participate today in this EAW
9 discussion. And I just want -- I didn't prepare comments. I
10 listened to the discussion today and I hope I can be helpful as
11 you guys consider any changes or what your reaction is to this
12 potentially proposed regulation.

13 I work for Trout Unlimited, and I'm based in
14 northeastern Nevada. Kind of far from you guys, but I'm in
15 good country that could potentially have some water that we
16 might want to nominate in the future. I wanted to start with
17 letting you know I actually serve on a commission myself, the
18 Mining Oversight and Accountability Commission, so I know -- I
19 thank you guys for your service. I struggle to do my best at
20 my commission duties as well. So you're appreciated, and I'm
21 glad you're listening to us with maybe some comments that we
22 might have that would help.

23 And one thing I have to say is I'm glad that it
24 looked like everyone agrees that this isn't going to be
25 thousands of streams. We don't have that many streams in

1 Nevada that would rightfully be a burden to go through this
2 awesome process to provide a little more protection. But when
3 we do have those gems, I really hope we can put together a good
4 process that we can elevate the protection for the future.

5 I mean, this is all about the future when we're
6 talking about these streams, for sure. So thanks again for
7 considering. And I have to say, I hope we can keep the burden
8 down on nominators for even just nominating streams. And we
9 all need to work together. That's a given. And having the
10 local input that's designed into this process, as well, that's
11 really important.

12 So what I want -- would like to do is just give you
13 guys a story that will hopefully be a true story when we get
14 this regulation passed. And Trout Unlimited has been working
15 with the Summit Lake Tribe and Summit Lake, which is on the
16 reservation. But there's streams that run into Summit Lake
17 that are wonderful LCT streams. And this might be a really
18 good real-world example where we could use this tool to do some
19 good to protect an area for future benefit. So it's just an
20 example, something to show you that's real life that we would
21 like to be the first to use this tool when it's put in place
22 for those streams.

23 So again, if the burden on the nominators could be
24 put down to what makes sense and what is really needed, and the
25 costs. That Section 4(d) about the nominators would have to

1 cover all of the costs, including adopting the regulation,
2 that's a real burden to I think pretty much everybody. But I
3 think working with our regulatory agencies and our state
4 agencies as all of us Nevadans should be able to would help to
5 alleviate that. It's probably just a wording thing for that
6 section.

7 So that's all I would say is cost, minimizing the
8 burdens to what is really necessary, and we all work together.
9 I thank you and I'm excited that we're going to finally enter
10 this process as many of the other states around us has already
11 tackled, actually years ago. So with that, I'll take any
12 questions and I look forward to working into the future with
13 all of you on this. Thank you.

14 TOM PORTA: Do the commissioners have any questions
15 for Ms. Harrington or Ms. Hamby? I didn't call for any
16 commissioner questions after her testimony.

17 SHERYL FONTAINE: No hands raised.

18 TOM PORTA: No? Okay. Seeing no one, we'll move on.
19 Carrie Sandstedt?

20 CARRIE SANDSTEDT: Hey, there. Can you hear me okay?

21 TOM PORTA: We can hear you.

22 CARRIE SANDSTEDT: Great. Thanks. Hi, I'm Carrie
23 Sandstedt. I'm a senior manager with the Pew Charitable
24 Trusts, which is an independent, nonprofit, nonpartisan
25 organization. I want to thank the members of the SEC today for

1 the opportunity to give public comments and also to NDEP for
2 their communication and collaboration throughout this process
3 to establish a policy to protect Nevada's outstanding waters.

4 As stated by commenters already, outstanding natural
5 resource waters, or EAW, as they'll be known in Nevada, are
6 determined by the state through the authority granted them by
7 the Clean Water Act. Pew works the groups in several states to
8 protect ONRWs, and we understand that not all water bodies will
9 qualify for this designation, but we've seen the importance of
10 protecting high-value, high-quality waters, as do the states in
11 which we work.

12 In fact, yesterday, Colorado used this policy to
13 protect over 500 miles of rivers in the state. And also
14 yesterday, it's a banner week for clean water, the New Mexico
15 Water Quality Control Commission held a hearing on a petition
16 led by New Mexico's Outdoor Recreation Division to protect over
17 100 miles of waters in the state. So we look forward to a
18 policy that allows the public to successfully petition for the
19 protection of EAWs.

20 And overall, this draft has the potential to become a
21 very strong policy to protect some of the state's highest value
22 waters. And we need to make sure we get this done right and do
23 what is required by the Clean Water Act and EPA guidelines.
24 And we do have some specific comments on the policy that I'll
25 cover now, and I'll just reference the section and subsection

1 numbers and the page numbers of the draft policy that NDEP
2 submitted.

3 In Section 2, Subsection 3, 1 through 3, and with
4 some modifications to Section 2(3)(4), will all give ample
5 information to prove that a water body qualifies as an EAW.
6 However, in Section 2, Subsection 3(4), on page 2, regarding
7 water chemistry data, it's extremely time and
8 resource-intensive to test water quality. I think a lot of
9 that has been covered today. And with that, we recommend that
10 other existing data points, such as recreation activities,
11 healthy fish populations, flora and fauna species, and other
12 indicators of river health be used as indicators for high water
13 quality.

14 In Section 2, Subsection 3(5), on page 2, this
15 section is already covered by the requirements of the Clean
16 Water Act and EPA regulations, which explain why a surface
17 water or a section of a surface water require a higher level of
18 protection. I think what's more, this section is redundant to
19 what is required in Section 2, Subsection 3(3) and 3(4) on page
20 2.

21 And then, moving down to Section 2(3), 6 through 9,
22 beginning on page 2, we feel that these are really outside the
23 scope of the EPA's requirements for ONRWs and what is
24 contemplated by the Clean Water Act. A member of the public
25 petitioning for an EAW protection should be expected to meet

1 the EPA's requirements and not unrelated and potentially
2 overwhelming justifications.

3 In Section 2(3)(6), at the end of page 2, the
4 requirements for a watershed inventory are beyond the scope of
5 what's contemplated by the Clean Water Act, and it serves as an
6 unnecessary burden which could discourage members of the public
7 from engaging in this process. And we recommend deleting this
8 section.

9 Section 2, Subsection 3(7) on page 3, requires that
10 an EAW nomination include a statement detailing the
11 compatibility of the classification with any preexisting or
12 preauthorized land use activity. However, Sections 6E -- and I
13 must ask if I can pause. I have a sick child at home who is
14 calling me. May I have a second and I apologize for that.

15 TOM PORTA: Sure. No problem.

16 CARRIE SANDSTEDT: And come back. Thank you. I'm so
17 sorry.

18 TOM PORTA: Yeah. Okay. We'll wait here a minute or
19 two. Sheryl, do you want anybody that's commenting to submit a
20 written -- that might have had a written statement to you all?
21 Or do you think the recording will be enough.

22 SHERYL FONTAINE: I think for the second commenter,
23 everything, like you already mentioned, a written.

24 TOM PORTA: Okay. From Ms. Sandstedt?

25 SHERYL FONTAINE: If you could. My guess is

1 that -- yes.

2 TOM PORTA: Okay.

3 SHERYL FONTAINE: Yeah. I think the rest of this is
4 probably clear.

5 TOM PORTA: Okay. Okay. I'll ask.

6 SHERYL FONTAINE: Certainly, if they would like to
7 submit something written.

8 TOM PORTA: Yeah. Yeah. There she is.

9 CARRIE SANDSTEDT: Thank you so much for your time
10 and understanding.

11 TOM PORTA: Certainly.

12 CARRIE SANDSTEDT: I think there's a stomach bug
13 going around my community, so.

14 TOM PORTA: Okay.

15 CARRIE SANDSTEDT: Sorry about that.

16 TOM PORTA: No. Go ahead.

17 CARRIE SANDSTEDT: Thank you. But I was just
18 referring to Section 2, Subsection 3(7), and the statement
19 detailing compatibility, the classification. Section 6E states
20 that the classification of an EAW doesn't restrict or change
21 any land use activities, and therefore, we feel the
22 requirements outlined in this section are unnecessary and
23 overly burdensome and also recommend deleting this subsection.

24 And just a few more to go. In Section 2, Subsection
25 3(9) on page 3, regarding public outreach and communication.

1 We understand that robust participation and opportunities to
2 comment on an EAW nomination will be a very important part of
3 the designation process. And we just hope that the Division
4 would clarify that the EAW criteria set forth in Section 2.1
5 really to govern the designation and classification of these
6 waters and not additional criteria which are not required
7 pursuant to the Clean Water Act. We recommend that this
8 following -- the section read, "Evidence of any public
9 participation in communication efforts," and period, and delete
10 the following language in the subsection.

11 And then finally, and I think folks have really hit
12 on this today, too, in Section 2, Subsection 4(d) on page 4,
13 we're definitely sensitive to the agencies' funding limitations
14 and the resource needs to carry out the protection of
15 high-quality waters in the state. However, this section is
16 just overly general and open-ended regarding costs that
17 petitioners are responsible for. The public shouldn't be
18 expected to incur potentially overwhelming costs associated
19 with implementing a federal law designated to protect clean
20 water.

21 So this section really (indiscernible) no controls on
22 what costs could be incurred and shifts the resource burden to
23 members of the public or other petitioners. So we recommend
24 either really clarifying this section or deleting it.

25 Thank you for your time today. Thank you to NDEP for

1 all of your engagement on this and the opportunity to comment
2 today. I'm happy to take any questions.

3 TOM PORTA: Any questions for Ms. Sandstedt?

4 Would you mind submitting your comments in writing to
5 Sheryl, our executive secretary? Or providing her --

6 CARRIE SANDSTEDT: I will. I -- I'm sorry, go ahead.

7 TOM PORTA: Or at least the written -- a written
8 document of your recommended changes?

9 CARRIE SANDSTEDT: Absolutely. I would be happy to
10 do that. It may be in the next day or so if that is okay?

11 TOM PORTA: Yeah. That's fine.

12 CARRIE SANDSTEDT: Okay. Great. Thanks.

13 TOM PORTA: Thank you.

14 CARRIE SANDSTEDT: Okay.

15 TOM PORTA: All right. Our next public comment, Kara
16 Steeland.

17 KARA STEELAND: Hi. Good afternoon, Chair and
18 commissioners. I am Kara Steeland from the Truckee Meadows
19 Water Authority. We submitted a letter on behalf of ourselves
20 and some of the other agencies in the Truckee Meadows. I'm
21 just going to run through a few points we discussed in that
22 letter.

23 So TMWA obviously recognizes the importance of
24 maintaining water quality and supports protecting extraordinary
25 waters. We really appreciate NDEP's public outreach process

1 during this and a lot of our comments were considered and the
2 proposed regulations were updated, particularly in regard to
3 the nomination process coming to the SEC instead of going
4 directly to NDEP.

5 And there are still several sections of the draft
6 regulations that we just have some concerns about in terms of
7 their intent and clarity. Particularly, we still feel like the
8 criteria are remain extremely broad for nominations without
9 specific explanations of how that attributes for things like
10 other important ecological, aesthetic, or recreational values
11 would be determined. It's pretty broad. It's not specific to
12 water quality, so I think it's up for interpretation.

13 Specific data requirements should be clearly outlined
14 that show what credible evidence is needed to support a
15 nomination. And it's been discussed here several times that
16 there are lots of water bodies that probably are not a
17 candidate for nomination, but it's not really specified in the
18 regulations at all. Other states like Oregon have specified
19 areas that are targeted for outstanding water resource
20 nominations. They specifically call out priorities such as
21 state and national parks, national wild and scenic rivers,
22 state and national wildlife refuges, and federally designated
23 wilderness areas.

24 So they're really speaking to what that regulation is
25 trying to protect, which I think in our minds we all recognize.

1 But without that intent actually being in the regulations, it
2 could be up for interpretation in the future. A similar
3 strategy would be useful in Nevada to help guide future
4 nominators to the actual intent of the designations, that truly
5 extraordinary waters in the state.

6 And then kind of more of a process question we've had
7 is in terms of the timeline for designations, it doesn't seem
8 like there's a clear process for renominations of a water body.
9 So will additional proof or a certain time frame be required if
10 a water body be renominated as an EAW, just in recognition of
11 the commission's time and NDEP's time. There's obviously
12 limited resources, so we wouldn't want nominations to come over
13 and over again.

14 And again, we really appreciate NDEP's extensive
15 public outreach process regarding these draft regulations and
16 we support the overall intent of the regulations. We would
17 just still like some refinement and additional clarifying
18 language added to the final regulations to ensure that there
19 are no unintended consequences in the future for our community.

20 TOM PORTA: Thank you.

21 KARA STEELAND: With that, thank you so much for your
22 time today.

23 TOM PORTA: Thank you. Any questions for Ms.
24 Steeland? Anybody online? No? Thank you.

25 KARA STEELAND: Thank you very much.

1 TOM PORTA: Next is Michael Driftwater (phonetic).

2 SHERYL FONTAINE: I don't have anybody by that name
3 online.

4 TOM PORTA: Okay.

5 SHERYL FONTAINE: Not yet.

6 TOM PORTA: Okay. Is there someone from the Truckee
7 Meadows Water Reclamation Facility?

8 SHERYL FONTAINE: We might have had a drop-off. I'm
9 not sure.

10 TOM PORTA: oh, okay.

11 SHERYL FONTAINE: I never saw that name on here.

12 TOM PORTA: Okay. All right. Moving on. Next is
13 Allen Biaggi.

14 ALLEN BIAGGI: Good afternoon, Mr. Chairman and State
15 Environmental Commission members. My name is Allen Biaggi and
16 I'm here today representing the Nevada Mining Association.
17 First of all, let me applaud the Division for their outreach
18 efforts. I have never seen quite as extensive an outreach to
19 all parties as the Agency did for this effort.

20 And I also want to applaud all of the people who have
21 been involved in this process, because it's been professional
22 and collegial, and while we might not have all agreed on all of
23 the components, it's been a civil and productive discussion.
24 So been a very positive experience from that perspective.

25 This body of regulations going before the SEC later

1 this year will probably be the most complex you've seen in 20,
2 25, maybe even 30 years. They're very detailed. They're very
3 technical in nature. And as you've seen today, they're really
4 difficult concepts to get around and there's a lot of policy
5 things that have to be considered. So I appreciate this venue
6 to really chat with you and it's I think unique to get your
7 input, and I think it's a great process.

8 NDEP has been very good about considering comments
9 that have been submitted by the Nevada Mining Association and
10 others. And they've been responsive and done regulatory
11 changes in accordance. The petition process, in particular,
12 the two-prong petition process that was originally proposed,
13 streamlining it down to a single submittal to the SEC is very
14 much appreciated and the right thing to do.

15 We also appreciate and support the two-pronged
16 process that Paul has outlined where there's the initial
17 determination of whether the regulatory process should move
18 forward, and then allowing some time to work through that
19 process for the establishment of the EAW.

20 We very much appreciate the inputs that have been
21 made to the regulations with the separation of water quality
22 from water rights. Chairman -- Commissioner Sullivan, you've
23 alluded to this. It was certainly brought up in the
24 legislative commission the other day. There needs to be a
25 bright line distinction between water quality and water

1 quantity. And I think your suggestion that additional language
2 may be appropriate is well-placed.

3 Our members and some of the others from the regulated
4 community strongly believe that an EAW designation cannot drive
5 land uses, historic land practices, grazing, irrigation,
6 mining, et cetera. So that's in there, and we support its
7 intention.

8 We're also concerned and will work with the Agency on
9 ensuring that EAW designation doesn't impact future land uses.
10 So not only are we looking for no impacts to existing land
11 uses, but there's a great concern out there that future land
12 issues could be impacted by EAW designation.

13 I think the better information and the more complete
14 information you can get within your regulations on what
15 constitutes a complete EAW petition is critical. You know,
16 when those of us in industry have to submit a permit, it's
17 really critical that the application is complete as possible in
18 order for the Agency to move forward. That ensures timeliness
19 and it ensures less conflict. I think a petition for an EAW is
20 the same. As clear as you can make the criteria and as clear
21 as the petitioner can address that criteria will have better
22 definition and better outcomes in the long run.

23 We've talked a lot today about the role of NDEP in
24 this process. You as a commission don't have a staff. You
25 have to rely on NDEP in order to make technical recommendations

1 and the direction of how the petition should move forward in
2 accordance with state policy and more importantly, state law.
3 The Division must maintain an objective and unbiased role for
4 you so that they can give you good information on moving
5 forward with the EAW petition.

6 And then cost. You know, we've talked a lot about
7 this. Cost is an issue. NDEP doesn't get any general funds.
8 They are funded through federal grants and through fees
9 assessed to the regulated community. When our industry submits
10 a permit application, we are paying for that staff time to do
11 that. I'm not suggesting that that's the case in a regulatory
12 petition, but I think it's an issue that we need to discuss and
13 need to come to compromise on to ensure that the Agency isn't
14 overly burdened by these petitions.

15 Finally, we're really only talking about the EAWs in
16 detail today. The anti-degradation review process is still out
17 there. NDEP has modified those proposed regulations, but
18 you're not really hearing those or discussing those today. And
19 those are of great concern to us. And so we'll continue to
20 work with the Agency and come up with a anti-degradation review
21 process that hopefully works for everybody.

22 So with that, I'd be happy to answer any questions
23 you may have.

24 TOM PORTA: Any questions for Mr. Biaggi? Kathryn?

25 KATHRYN LANDRETH: Hello. Hello, Mr. Biaggi.

1 ALLEN BIAGGI: Hello, Kathryn.

2 KATHRYN LANDRETH: I want to make sure I understood
3 something, and this may require participation of our staff
4 folks, too. You say that EAW should have no impact on future
5 land uses.

6 ALLEN BIAGGI: Yep.

7 KATHRYN LANDRETH: Can you be a little more specific?
8 Because I think the way the law is intended, it could. I mean,
9 the whole thing is to prevent future degradation, right? So
10 can you explain?

11 ALLEN BIAGGI: Certainly. And I want to make a
12 distinction here. I mean, an EAW and the authority for this
13 program is coming out of the Nevada Water Pollution Control Law
14 and the federal Clean Water Act. Those don't drive land use,
15 either. And I think the best example that could be made here
16 is if an EAW was established on a mountain stream, let's say in
17 the Ruby Mountains, for example. And that's on federal land.
18 And a grazing allotment -- a grazer of cows or sheep decided
19 that that was an appropriate place to graze sheep. Could the
20 EAW be utilized as a mechanism to deny a grazing permit or
21 grazing rights within that area?

22 We don't believe that that is an appropriate role of
23 an EAW in and of itself. Now certainly, there's already
24 regulations concerning non-point source control and those kinds
25 of things that could address those grazing concerns and best

1 practices and that sort of thing. The EAW itself should not
2 drive land use or water use.

3 KATHRYN LANDRETH: And may I ask the same question of
4 the staff? I'm thinking about Tier 3, where there's no
5 discharge. Could that drive -- the designation drive the
6 effect of, you know, the EAW, in other words? Could
7 it -- could a Tier 3 designation be a basis for preventing,
8 like, a new grazing permit if there were evidence that there
9 would be some kind of discharge into the body?

10 PAUL COMBA: Paul Comba for the record. The Tier 3,
11 you know, under the anti-deg is really focused on a point
12 source discharge. Grazing is generally a diffuse source of
13 pollution, so that really doesn't fall underneath the anti-deg
14 policy or under the Clean Water Act.

15 KATHRYN LANDRETH: Right.

16 PAUL COMBA: So from that perspective, Kathryn, it
17 would be more on the precluding any future discharge into that
18 water body.

19 KATHRYN LANDRETH: Can you think -- I don't know. I
20 don't want to belabor this, but can you think -- I just want to
21 know if you are -- if your view is consistent with Mr. Biaggi's
22 about that an EAW should have no impact on future land uses?

23 JENNIFER CARR: This is Jennifer Carr for the record.
24 In part, what Nevada would be deciding if they chose to
25 designate an EAW is that future point source discharges to that

1 water body would not be allowed if it's a Tier 3. If it's a
2 Tier 2.5, potential discharges with no degradation.

3 So to some degree, yes, that would be a land use
4 decision because if someone wanted to build a subdivision in
5 that area and create a wastewater treatment plant that
6 discharged to that stream, they would not be allowed. Paul
7 addressed grazing, which is more of a non-point source issue --

8 KATHRYN LANDRETH: Right.

9 JENNIFER CARR: -- which is outside what we're trying
10 to do here. But for point sources, yes. And whether or not
11 that's the right thing is part of the question. But for a
12 designation of an EAW, that would actually be part of the
13 point, is that future discharges to that water body would be
14 restricted or prohibited, which could affect future land uses.

15 TOM PORTA: And I think as we move forward with this
16 process that that needs to be made clear to all the
17 stakeholders, that this could impact that there would be no
18 type of industry or whatever that's a point source discharge to
19 this water. I think that needs to be pretty clear, minimum.

20 ALLEN BIAGGI: And Commissioner Landreth, this gets a
21 little more complex as well because many of the potential
22 streams that could be designated as an EAW are on federal
23 lands. And so what does that do in the NEPA process, for
24 example, in determining what land uses are and in the land uses
25 planning process.

1 So it's not nearly as clear cut and as
2 straightforward as it would appear. There's lots of nuance to
3 it.

4 KATHRYN LANDRETH: Thank you. Yeah.

5 TOM PORTA: Yeah. Eighty-plus percent federal lands.
6 Nevada is not the only stakeholder.

7 ALLEN BIAGGI: That's right.

8 KATHRYN LANDRETH: Yeah.

9 TOM PORTA: Jennifer?

10 JENNIFER CARR: Jennifer Carr again for the record.
11 So you're starting to experience what we've been through for
12 the last two years. And a lot of it is embedded in the
13 decisions about largely, like, the 6 through 9 in the
14 regulations. You know, what is considered burdensome in having
15 someone apply for an EAW?

16 You know, as we've said, you know, we felt you would
17 want to know certain things. We felt you would probably want
18 to know about current and potential approved future land use.
19 We might not -- certainly wouldn't necessarily have a crystal
20 ball for any possible future land use.

21 But certainly, you -- we think that you would want to
22 have a land use discussion as part of the EAW decision-making
23 process. We think that you would like to have a discussion
24 about water rights. Who's taking water out? And with
25 discharge permitting, who's putting water in? And those sorts

1 of things.

2 As you've heard, some -- and I have utmost respect
3 for our -- the folks you've already heard from, from our NGOs.
4 But we're caught in the middle now with saying, you know, in
5 order to make a decision, we need this information. And then
6 at the same time, we're hearing but that's burdensome. It's
7 too much information. It's too hard to get to the bottom of.
8 So we're kind of stuck.

9 And so yeah, there's the bottom line for why we're
10 here today.

11 TOM PORTA: All right.

12 SHERYL FONTAINE: Mr. Wasley has his hand up.

13 TOM PORTA: Okay. Go ahead.

14 TONY WASLEY: Thanks, Mr. Chair. I appreciate
15 Commissioner Landreth's question and it really kind of gets to
16 the crux of this. And in fact, it, as it exists in the current
17 regulation, there's a caveat that it would ensure that it
18 wouldn't impact, affect any past uses. And then, as Mr. Biaggi
19 suggested, it would have no impact on future land uses.

20 And that kind of begs the question, you know, is this
21 worth the time, energy, and effort, or what value is it? Is it
22 strictly to place a label on something that would have no
23 regulatory nexus? And so I think that really gets to the
24 criteria and the EAW criteria, the 1, 2, and 3.

25 But I wanted to ask Mr. Biaggi if he could speak

1 to -- provide some clarification on your statement about the
2 lack of general fund and the relevance of that statement to the
3 time or energy or effort spent potentially evaluating nominated
4 waters.

5 ALLEN BIAGGI: Sure. Happy to. Thanks, Tony. Once
6 again, Allen Biaggi for the record. So NDEP does not receive
7 any general funds. And you know, for example, for the Mining
8 Bureau that oversees the mining industry, it is supported 100
9 percent by fees assessed to the mining industry. And some of
10 the water pollution control and air pollution control programs,
11 they're supported by fees associated with permits associated
12 with the Clean Water Act and the Nevada Water Pollution Control
13 Law or the Nevada air laws.

14 So when you are -- and there's some federal grants,
15 obviously, as well. So when you're taking away resources that
16 are extraordinarily scarce, as we heard, there's 18 percent
17 vacancies, what's not going to get done because a petition is
18 coming forward and there's no ability to -- you know, I guess
19 I'm not suggesting that they should be paying the Agency for
20 that petition.

21 I'm saying that that petition should be as complete
22 as possible to reduce as much as possible of the burden to the
23 Agency so they can do not only this petition process but the
24 other things that they're obligated to do that are paid by fees
25 and non-general funds.

1 TONY WASLEY: Thanks. Thanks, Allen. And I know
2 you're well aware of the funding law that we operate under with
3 a really, really narrow, you know, disproportionate reliance
4 on, you know, a small percentage of citizens to fulfill that
5 public trust doctrine for everyone. And I was just curious of
6 that source of funding limited that statutory charge or the
7 public trust responsibilities, or if that's where you were
8 going with that. So I appreciate the clarification. Thank
9 you.

10 ALLEN BIAGGI: Yeah. And you know, I think Ms.
11 Harrington and I have had a conversation. She brought this up
12 in our last meeting that the current language could be implied
13 to mean that the petitioner also has to pay for the State
14 Environmental Commission meeting and other expenses associated
15 with the regulatory development process. I don't think that
16 was ever the intent.

17 You know, it was just to make sure that the petition
18 process is borne by the petitioner. But I don't think there's
19 any suggestion that the -- that they should, you know, pay for
20 the State Environmental Commission meetings and those
21 regulatory requirements. That's not -- that wasn't, I don't
22 think, anyone's intent.

23 TOM PORTA: Any other questions, Tony? Okay.

24 TONY WASLEY: No, sir. Thank you, Mr. Chair.

25 TOM PORTA: Okay. I guess I'll just add, and correct

1 me if I'm wrong, Jennifer and Paul, but your bureau is only
2 primarily funded by federal grants. You don't have permit fees
3 substantially supporting your program, right?

4 JENNIFER CARR: A hundred percent.

5 PAUL COMBA: That's correct, Mr. Chair.

6 TOM PORTA: Yeah.

7 PAUL COMBA: And actually, our staffing level and our
8 funding levels are pretty much the same when you were bureau
9 chief.

10 TOM PORTA: Yeah. Like 20 years ago. Yeah, so.
11 Okay. Anything else for Mr. Biaggi?

12 Thank you, Allen.

13 ALLEN BIAGGI: Thank you, Mr. Chair.

14 TOM PORTA: All right. I'm not sure if he's on the
15 line, but Larry Bazel.

16 LARRY BAZEL: I am. I'm here. Mr. Chair, members of
17 the commission, good afternoon. I'm Larry Bazel, here for the
18 Clark County Regional Flood Control District, whose members are
19 Clark County and the Cities of Las Vegas, Henderson, and North
20 Las Vegas. My comments today are all positive.

21 We would like to thank Paul Comba and NDEP staff
22 generally for their good work on the anti-degradation portion
23 of this proposal. You've heard from Jennifer Carr and Allen
24 Biaggi that the outreach here was excellent. It was. But even
25 better was the response of Paul and NDEP staff to the comments

1 they received, particularly the negative comments from us and
2 from other members of the regulated community.

3 That's the hard part. Human nature makes everyone
4 want to dig in and protect the work we've done. But here,
5 NDEP, they've listened carefully, heard our concerns, and
6 proposed creative solutions. That was great work. And the
7 purpose of this outreach and comments are to get a regulation,
8 or in other cases, a (indiscernible) or other kind of proposal
9 focused on protecting the environment, that's its job, and cut
10 out the unintended consequences, those things that don't do
11 anything for the environment but give the regulated community
12 endless headaches.

13 And not surprisingly, we often see that more clearly
14 than anyone else. Here, the response of NDEP has been great.
15 It's been great in other instances in the past. But this one
16 was particularly clear and notable.

17 And we thought that the commission might like to hear
18 that NDEP is doing great work reaching out and responding to
19 comments from the regulated community that the commission may
20 not see because once the issues are resolved, people like me,
21 they disappear. We've got nothing to complain about or change.

22 So anyway, we look forward to continuing to work with
23 NDEP on this issue and on other issues in the future. Thank
24 you.

25 TOM PORTA: Thank you, Mr. Bazel. Any questions from

1 the commissioners from Mr. Bazel?

2 Thank you, Larry. We have a couple letters we want
3 to read into the record, but maybe before we do that, I'll just
4 check to see if there's anybody else online or here in person
5 that wishes to make a comment on this agenda item.

6 Okay. Sheryl is shaking her head no, we don't have
7 any hands being raised. All right. Well, let's go ahead and
8 read into the record, Sheryl, if you would. We have one letter
9 from the Nevada Farm Bureau and then a joint letter from the
10 Truckee Meadows Water Authority, City of Reno, Washoe County,
11 and the City of Sparks.

12 SHERYL FONTAINE: We received the joint letter from
13 Truckee Meadows Water Authority, City of Reno, Washoe County,
14 and the City of Sparks on Friday, June 10th, regarding public
15 comment on Agenda Item 6, update on the status of permanent
16 regulation R119-20.

17 "Dear Commissioners, thank you for the opportunity to
18 comment on the proposed regulation R119-20. These comments are
19 submitted on behalf of the City of Reno, City of Sparks, Washoe
20 County, and Truckee Meadows Water Authority. Collectively,
21 these public entities manage the region's water resources,
22 supply clean drinking water to over 440,000 people, and treat
23 and discharge wastewater.

24 "We support protecting Nevada's waterways for all
25 beneficial uses and appreciate the Nevada Division of

1 Environmental Protection, NDEP's, leadership in developing
2 these regulations. We appreciate the time and resources NDEP
3 has utilized to conduct workshops and address questions
4 stakeholders have posed regarding the proposed regulation.

5 "Several of our previous comments have been addressed
6 through the new version of the draft regulation, specifically
7 our concerns regarding the nomination process and the cost
8 associated with gathering the information necessary for a
9 nomination. We strongly support a high level of water quality
10 for Nevada's water bodies and believe it is important to
11 protect and maintain water quality.

12 "However, as agencies that provide drinking water and
13 treat wastewater within the Truckee Meadows, we still have some
14 concerns about the complexity and intent of the regulation.
15 The proposed regulations relating to EAW designation still lack
16 clarity in terms of water bodies that can be nominated. As
17 described below, the regulation is drafted broadly and without
18 the necessary specificity to guide individuals as to what
19 waters are truly meant to be protected as 'extraordinary'.

20 "As drafted in Section 1 A through C, the categories
21 are so broad that almost any water body could be nominated. At
22 a minimum, NDEP should create a list of priority water bodies
23 for nomination in Nevada based on specific criteria. Other
24 states, such as Oregon, describe which areas are charted to be
25 designated 'outstanding resource waters'. Oregon's priorities

1 include those in state and national parks, national wild and
2 scenic rivers, state scenic waterways, and those in state and
3 national wildlife refuges and those in federally designated
4 wilderness.

5 "A similar strategy would be useful in Nevada to help
6 guide future nominators to the intent of EAW designations.
7 Providing skills like this would also help to reduce the number
8 of nominations received. The specific requirements necessary
9 for an EAW nomination, particularly regarding water quality,
10 need to be clearly outlined in the regulations. Section 2,
11 Subsection 3(a)(4) states, 'Adequate and representative water
12 chemistry data that supports the nomination and demonstrates
13 that water quality is higher than applicable standard for water
14 quality, et cetera.'

15 "The regulation should indicate how many samples for
16 what time period and at what interval water quality data is
17 needed to prove 'higher quality'. It should also specify what
18 is credible evidence to support the petition.

19 "Finally, any EAW process should provide adequate
20 notice and clear opportunities for comment and engagement.
21 Additional questions also should be addressed, such as, one,
22 can additional data be provided by the public, two, if a water
23 body is nominated and ultimately not granted EAW status, what
24 other criteria before it can be nominated.

25 "City of Reno, City of Sparks, Washoe County, and

1 Truckee Meadows Water Authority thank you for considering our
2 comments. We also appreciate NDEP's efforts to work through
3 these proposed regulations with interested stakeholders. We
4 believe there is still more planning to avoid unintended
5 consequences that will impact our community. We are happy to
6 continue working with NDEP to refine these draft regulations to
7 protect Nevada's water.

8 "Sincerely," and this letter was signed by Armando
9 Ornelas, Community Water Services Director, City of Sparks,
10 Michael Drinkwater, Truckee Meadows Water Reclamation Facility,
11 Treatment Plant Manager, John Enloe, TMWA Director of Natural
12 Resources, Trina Magoon, the City of Reno Director of Utility
13 Services, and Dwayne Smith, Washoe County Director
14 (indiscernible).

15 The second letter from the Nevada Farm Bureau
16 Federation was received on Monday, June 13th, and reads:

17 "Chairman Porta, the Nevada Farm Bureau is writing
18 the commission today in reference to the proposed regulation
19 identified as LCB file number R119-20. This proposed
20 regulation seeks to establish the process for nominating and
21 potentially classifying a surface water or segment of the
22 surface water as a water of extraordinary ecological,
23 aesthetic, or recreational value. To streamline the type of
24 water being considered, I'll refer to it as an EAW.

25 "Our organization has participated in the development

1 process that the Nevada Division of Environmental Protection,
2 NDEP, conducted through this proposed regulation. We want to
3 go on the record as being very appreciative of the outreach
4 NDEP staff have conducted in preparing this proposed
5 regulation. We also want to express our appreciation for the
6 responsiveness and consideration of our input.

7 "Nevada Farm Bureau is a general farm organization
8 with Farm Bureau members throughout the State of Nevada. Many
9 of our farmer/rancher members could be negatively impacted by a
10 process for the designation of an EAW without appropriate
11 boundaries and protections included in regulation. Our primary
12 concerns involve the protection of water rights and existing
13 land uses associated with surface waters which may be
14 nominated -- excuse me -- which might be nominated and possibly
15 considered for designation.

16 "Section 2, beginning on page 1 and continuing to
17 page 3 of the LCB draft of proposed regulation R119-20 spells
18 out the type of information that a nomination should include as
19 background to be presented to the State Environmental
20 Commission for consideration as an EAW. Bullet 6, starting at
21 the bottom of page 2, notes that a watershed inventory should
22 be included in a nomination, including the current use of water
23 that would be related to the proposed designation of a surface
24 water or segment of the surface water.

25 "We strongly maintain that an EAW designation should

1 not be considered or be eligible for consideration if such a
2 designation would negatively impact a water right or type of
3 beneficial use. We also believe it is essential to provide
4 recognition and protection of existing land uses. In noting
5 this, we want to specifically call attention to 7 on page 3."

6 And they've quoted that, which I'll read.

7 "'Seven, a statement detailing the compatibility of
8 the classification with any preexisting or preauthorized land
9 use activities on lands adjacent to the surface water or
10 segment thereof, which must include without limitation,
11 historical irrigation practices, livestock grazing, and other
12 agricultural activities in the watershed.'

13 "We strongly maintain that an EAW designation should
14 not be considered or be eligible for consideration if such a
15 designation would negatively impact existing land use on
16 private or federally managed lands which are adjacent to a
17 surface water or a segment of a surface water body.

18 "Along with the essential protections covered in the
19 portion of the regulation of what information should be
20 provided with a nomination for an EAW, the listed items for
21 number 6 at the bottom of page 4 are essential in actually
22 preventing designations where the five bullet points, A through
23 E, are associated with the proposed EAW. Any negative impacts
24 in any of these areas should be -- should automatically
25 disqualify a surface water or segment of a surface water from

1 any further consideration.

2 "We have reservations about the lack of specific
3 notice which might occur involving impacted water right owners
4 or persons using lands, private or federally managed, adjacent
5 to a proposed EAW. The last thing that should occur is having
6 an EAW designated and then because of their requirements for
7 water quality related to the designated waters, that the land
8 use would no longer be acceptable or the water right would be
9 harmed.

10 "It would be helpful to ensure that every proposed
11 EAW trigger the requirements of Nevada's Administrative
12 Procedures process and notification of all land users and
13 property/water right owners within the watershed of a proposed
14 EAW.

15 "Thank you again for NDEP's open process in bringing
16 us to this point. Nevada Farm Bureau looks forward to
17 continuing to work for the necessary protections of
18 property/water right owners and existing land uses. Sincerely,
19 Doug Busselman, Executive Vice President, Nevada Farm Bureau."

20 TOM PORTA: Thank you, Sheryl. Before we close the
21 public comment, I'd just like to ask one more time, is there
22 anybody online or here in person that wishes to make a
23 statement?

24 SHERYL FONTAINE: No hands raised.

25 TOM PORTA: Seeing nobody, I will close the public

1 comment period on Agenda Item Number 6.

2 I'll just make a comment, I thought it was good
3 today. We heard from a lot of folks. I think very robust
4 discussion. And you know, kudos to you guys again for reaching
5 out to all the people that need to be reached out to in this.
6 It's not easy. But I think we heard today there's a little
7 more work to do. And I just want to encourage the Division and
8 your staff to keep working on this.

9 Obviously, you've got to resubmit the petition
10 anyway, so I think the timing is probably good that try to
11 incorporate some of these comments that you heard today or find
12 some type of middle ground to work with. It's not an easy
13 task. And I'm glad I don't work there anymore. I'll say that.

14 So with that, we will move on to Agenda Item Number
15 7, Administrator's Briefing.

16 GREG LOVATO: Thank you, Chair Porta, members of the
17 commission. I'm Greg Lovato, NDEP Administrator. So I just
18 have three items to update the commission on. The first is
19 related to management and improvement of conditions where
20 non-point sources may be affecting surface water quality. I
21 know we were talking a lot today about, you know, point
22 sources. But there's a recognition that non-point sources can
23 often constitute a more significant, you know, degradation for
24 certain watersheds. And in fact, many.

25 And so as I briefed the commission last year, there

1 was a focus on non-point sources during the hearings for
2 Assembly Bill 146. Assembly Bill 146 is focused on ensuring
3 that Nevadans give priority to non-point source protection,
4 which is most of the time non-regulatory.

5 During those hearings, the NDEP had let the
6 legislators know that we would be working on updating the best
7 management practices manual for managing non-point sources,
8 which hasn't been updated since 1994. And so we just started
9 work on that this past week. And that'll be continuing. And
10 our goal is to probably bring it to the SEC sometime in
11 early -- or first part of 2023. There will also be a hearing
12 before the State Conservation Commission as they're part of
13 reviewing that best management practices manual.

14 Right now, we're anticipating potentially a modular
15 and online update rather than, you know, a hard copy bound
16 version, and that might enable updating of sections on a more
17 kind of regular basis rather than waiting to update it all at
18 once.

19 So the next item I wanted to update you on is a
20 change in our management team. Our Bureau of Mining Regulation
21 and Reclamation, our mining chief, Amy Keyes, she
22 retired in April. Amy was the chief for about a year and a
23 half after Joe Sawyer. And we just made a hiring decision this
24 week, Rob Kuczynski, who's been the permitting branch
25 supervisor, or Regulation Branch, as we call it there.

1 He's been in the program for quite some time. He's
2 actually been with NDEP since the '90s. And so Rob has a good
3 experience behind him. He actually has also a career before
4 with the U.S. Bureau of Mines, managing research projects. And
5 so he brings kind of a unique technical experience and we're
6 excited to have him take that role on. And so you might see
7 Rob sometime soon to talk about mining issues.

8 The last issue I wanted to update the commission on
9 is related to PFAS chemicals. PFAS, or per- and
10 polyfluoroalkyl substances, I briefed the commission on last
11 year. We had a bill that came through, AB97.

12 And there was a pretty significant announcement today
13 from the EPA. They, in the process of evaluating drinking
14 water standards, they also in addition to establishing
15 enforceable drinking water standards, they establish what are
16 called drinking water health advisories.

17 And while those aren't enforceable, they are helpful
18 in terms of understanding, you know, when a substance may be
19 present at levels below which may be expected to cause adverse
20 effects over an entire lifetime and can be used to make some
21 management decisions. Some may remember that the chemical
22 perchlorate, which was a significant pollution issue and
23 actually still is but we've done a lot to improve it, never
24 actually had a drinking water standard but did have a health
25 advisory at 18 parts per billion quite some time ago. And the

1 Division and others acted to make sure that we were able to
2 clean it up, all without, you know, the benefit of a drinking
3 water standard.

4 So these health advisories can be helpful. The
5 unique thing about EPA's announcement today is the levels for
6 four of the thousands of PFAS compounds are set extremely,
7 extremely low. The previous health advisories for two of the
8 compounds were set at 70 parts per trillion and many of the
9 sampling -- much of the sampling that has taken place in Nevada
10 of drinking water sources in the mid-twenty-teens, all of those
11 water sources serving populations over 10,000 and I think four
12 or five under 10,000, all of them were below that 70 parts per
13 trillion level.

14 And so the announcement from EPA today sets four new
15 levels, two final levels at four parts per trillion for
16 substitute chemicals and levels below a part per trillion, so
17 now we're in the parts per quadrillion, for these previous two
18 chemicals. These are actually levels that are below limits of
19 detection at this point for analytical labs.

20 And so I guess I just kind of want to say what NDEP's
21 perspective on this is. You know, we're in communication with
22 the EPA in other states. You know, what we understand is that
23 this information, it really just reinforces the need for NDEP
24 to continue our efforts to assess where these chemicals might
25 be located. You know, we reviewed available information, and

1 we've been very close to developing, as we've been working on
2 it for the past year, a PFAS action plan that's specific to the
3 state.

4 So the goal of that is to prioritize additional
5 testing locations based on potential sources of PFAS and their
6 proximity to potential drinking water sources or actual
7 drinking water sources. So we've been developing that action
8 plan over the past year. It's been led by Michael Anton, who
9 is in our Bureau of Safe Drinking Water, along with
10 participants from other bureaus.

11 But the action plan development and schedule is
12 actually on our website and people can see, you know, the
13 process we've engaged in in our schedule over the past year.
14 We're actually planning to publish the action plan and what
15 we're calling a sampling prioritization tool next month in
16 July. And our current schedule is to develop a statewide
17 sampling plan and seek participants for a sampling project in
18 2023.

19 And so as recommended by the EPA, we'll continue
20 planning with public water systems to prioritize sampling,
21 steps to be taken if they're found, including informing
22 customers, and looking at steps to limit exposure. And there
23 is additional EPA funding being announced today, but we still
24 have a lot of work to do to understand eligibility and
25 applicability for any problems that may occur in Nevada.

1 Although Nevada had the challenge of perchlorate
2 since we remained a manufacturing center for ammonium
3 perchlorate, we were not or have not been a major manufacturing
4 center for these PFAS chemicals. So we haven't seen maybe the
5 same level of magnitude that is occurring in some of the other
6 states that they've been dealing with over the past several
7 years. But obviously, with these new lower levels, there's,
8 you know, could be potential for, you know, this to be detected
9 in quite a few places.

10 So you know, there's a lot to be decided still and
11 talked about, but I just wanted to let the commission know
12 since that announcement came out today, and that we are moving
13 to address in Nevada this concern.

14 TOM PORTA: So I assume, Greg, if you can't measure
15 it physically for the advisory, that doing some sort of
16 statistical analysis on the number that you do have to
17 determine whether it triggers an advisory?

18 GREG LOVATO: Well, I think we'll probably start
19 off -- I mean, we're actually probably -- sorry. Greg Lovato
20 for the record. We're at the stage right now where we've done
21 some baseline sampling. There's been some research sampling
22 done by DRI and others, and we've sort of compiled all that.

23 And so if -- I guess to answer your question, I think
24 you'd be faced with a situation where we're prioritizing
25 initially where were these uses of these chemicals likely

1 concentrated, where are those next to drinking water sources,
2 which of the drinking water sources might be most vulnerable.
3 Let's start there and see where that leads. I mean --

4 TOM PORTA: A type of inventory --

5 GREG LOVATO: Yeah. And so I don't know that you're
6 going to have -- be able to make a decision if you can't detect
7 the chemical. You're only probably going to be able to
8 prioritize actions based on detecting the chemical.

9 TOM PORTA: Yeah.

10 GREG LOVATO: Part of the reason -- and I learned
11 this, I think Deputy Administrator Carr was paying more close
12 attention than I was -- that the chemicals that are now set at
13 four parts per trillion, those are supposed to be substitute
14 chemicals for the chemicals where the health advisory was set
15 at 70 parts per trillion.

16 So EPA, in coming out with these advisory levels at
17 four for the substitute chemicals was in a position where they
18 said, well, they're still better than, I guess, the health
19 advisory is lower than, you know, the original chemicals.
20 Which, my understanding is that the replacement chemicals don't
21 spend as long in the human body. They're broken down more
22 quickly than the original two PFAS compounds.

23 TOM PORTA: Questions for Greg?

24 Thank you, Greg.

25 GREG LOVATO: Okay.

1 TOM PORTA: All right. Moving on to Agenda Item
2 Number 8. This is another public comment period. Anyone
3 online or here in the building that would like to make a
4 comment to the commission, now is your time.

5 So I don't see anybody here. Jennifer, do we have
6 any hands raised online?

7 Okay. All right. Seeing no takers for the public
8 comments for Agenda Item Number 8, I will close that portion of
9 the agenda and we'll move for adjournment. Can I get a motion
10 to adjourn?

11 KATHRYN LANDRETH: I'll so move, Mr. Chairman.

12 TOM PORTA: Okay. Kathryn. Any second?

13 TOM SMITH: Tom Smith.

14 TOM PORTA: Okay. Thank you. All right. So moved.
15 All those in favor?

16 (Unanimous verbal vote in favor)

17 TOM PORTA: All right. So moved. The commission is
18 adjourned for the day. Thank you, everyone.

19 (Proceedings concluded)

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C E R T I F I C A T I O N

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I, John Buckley, court approved proofreader, certify
that the foregoing is a correct transcript from the official
electronic sound recording of the proceedings in the above-
entitled matter, and to the best of my ability.

/s/

Date: July 18, 2022