

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

P2022-06

June 24, 2022

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: NRS 445A.160, NRS 445A.270, 445A.860

Section 1. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows: *Determination of a disadvantaged community; program to fund projects for a disadvantaged community*

- 1. The Division shall determine which systems will qualify as a disadvantaged community for purposes set forth in 42 U.S. code §300j-12(d)(3). The definition developed by the Division must be included in the Intended Use Plan developed pursuant to NAC 445A.67575 and 445A.67576. The definition may consider the following criteria:*
 - a. the income data of the project service area,*
 - b. the workforce indicators of the project service area,*
 - c. the affordability of water rates for users of the system,*
 - d. the population of the water service area,*
 - e. the population of the water service area not proficient in the English language,*
 - f. the percentage of project service area receiving subsidies or financial assistance from governmental entities or political subdivisions of the state, or*

g. a community experiencing an “emergency situation,” as defined by NAC 445A.67527.

- 2. The Division must also determine any program that funds projects for a disadvantaged community. The program must be outlined in the Intended Use Plan developed pursuant to NAC 445A.67575 and 445A.67576.*
- 3. Prior to finalization of any definition of a disadvantaged community for inclusion in the Intended Use Plan, the Division will conduct a public workshop and obtain approval from the Board for Financing Water Projects.*
- 4. Prior to establishing any program to fund projects for a disadvantaged community, the Division will conduct a public workshop and obtain approval from the Board for Financing Water Projects.*

Sec 2. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

State Environmental Review Process

- 1. The Division shall develop a state environmental review process.*
 - (a) The process must outline the environmental review process and the types of projects eligible or ineligible for specific environmental determinations as required by NAC 445A.6758 through NAC 445A.67612, inclusive.*
 - (b) The process shall be posted on the division’s website at <https://ndep.nv.gov/water/financing-infrastructure>.*
- 2. The development and any subsequent changes to the state environmental review process must obtain approval from the Environmental Protection Agency.*

Sec 3. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows:

Fee for Award of Financial Assistance

(a) The Division may impose and collect a fee from each public water system that receives a loan or other financial assistance from the Account for the Revolving Fund or the Account for Set-Aside Programs.

- a. For loans to disadvantaged communities, no fee will be assessed.*
- b. For principal forgiveness loans to non-disadvantaged systems, or short-term loans, a loan origination fee of \$1,000 will be assessed. The fee is due within 30 days of loan closing.*
- c. For long-term loans to non-disadvantaged systems:*
 - i. A loan origination fee of 0.50 percent of the original loan amount is due within 30 days of loan closing.*
 - ii. If the borrower is issuing a bond, an annual fee of 0.50 percent of the original loan amount, divided equally each year over the life of the loan, shall be collected on the second debt service of the state fiscal year.*
 - iii. If the borrower is not issuing a bond, an annual fee of 0.75 percent of the original loan amount, divided equally each year over the life of the loan, shall be collected on the second debt service of the state fiscal year.*

Sec 4. NAC 445A.67518 is hereby amended to read as follows:

NAC 445A.67518 “Capability” means:

1. ~~[The technical, managerial and financial capacity of a public water system; and]~~ *The technical capability as defined by NRS 445A.847;*
2. *The managerial capability as defined by NRS 445A.827;*
3. *The financial capability as defined by NRS 445A.817, and*
4. The ability to satisfy the requirements of chapter 445A of NRS and this chapter.
5. *Capacity shall be taken to mean capability for this definition.*

Sec 5. NAC 445A.67522 is hereby amended to read as follows:

NAC 445A.67522 “Community water system” ~~[means a public water system that:~~

- ~~1. Serves at least 15 service connections which are used by year round residents; or~~
- ~~2. Regularly serves at least 25 year round residents.]~~ *has the meaning ascribed to it in NRS 445A.808.*

Sec 6. NAC 445A.675245 is hereby amended to read as follows:

NAC 445A.675245 “Disadvantaged community” means an area served by a public water system ~~[in which the median household income is less than 80 percent of the state median household income.]~~ *that meets the definition developed pursuant to Section 1, and published in the most current version of the Drinking Water State Revolving Fund Intended Use Plan and approved by the Nevada State Board for Financing Water Projects (Board) as required by Section 1.*

Sec 7. NAC 445A.67527 is hereby amended to read as follows:

NAC 445A.67527 “Emergency situation” occurs when:

1. Water at a public water system is contaminated or is likely to be contaminated to such an extent that it causes an imminent danger to public health and the contamination could not have been prevented by the operator of the system; ~~[or]~~
2. There is a reduction of a source of potable drinking water for an extended period~~[-]~~; *or*
3. *There is an emergency declaration by the governor for an area that may impact the delivery of safe drinking water.*

Sec 8. NAC 445A.67534 is hereby amended to read as follows:

NAC 445A.67534 “Long-term loan” is a loan for which the term for repayment exceeds 5 years, but does not exceed ~~[20]~~ *30* years or the life of the water project, whichever is shorter, unless the term is extended by the Division pursuant to NAC 445A.67561.

Sec 9. NAC 445A.67536 is hereby amended to read as follows:

NAC 445A.67536 “Median household income” defined. “Median household income” means the most recent median household income:

1. As determined from data from the United States Census Bureau;
2. As documented by an applicant for the service area of the public water system *through an income survey*; or
3. As determined by a method set forth in the intended use plan developed pursuant to NAC 445A.67574, 445A.67575 and 445A.67576.

Sec 10. NAC 445A.67538 is hereby amended to read as follows:

NAC 445A.67538 “Noncommunity water system” defined. “Noncommunity water system” ~~[means a public water system that is not a community water system.]~~ *has the meaning ascribed to it in NRS 445A.828.*

Sec 11. NAC 445A.6754 is hereby amended to read as follows:

NAC 445A.6754 “Nontransient, noncommunity water system” defined. “Nontransient, noncommunity water system” ~~[means a public water system that is not a community water system which regularly serves at least 25 of the same persons over a period of not less than 6 months.]~~ *has the meaning ascribed to it in NRS 445A.829.*

Sec 12. NAC 445A.67545 is hereby amended to read as follows:

NAC 445A.67545 “Process of environmental review” defined.

“Process of environmental review” means:

- 1) a process which has been approved by EPA and is available from the Division that specifies the Division’s Environmental review process that is equivalent to the process in the National Environmental Policy Act of 1969, 42 U.S.C. §4321 et seq. and implementing regulations (40 C.F.R. Parts 1500 through 1508, inclusive).*
- 2) the development and evaluation of environmental information concerning a water project that enables the Division, pursuant to NAC 445A.6758 to 445A.67612, inclusive, to make a determination whether to:
 - ~~[1]~~*(a).* Grant a categorical exclusion;
 - ~~[2]~~*(b).* Make a finding of no significant impact; or
 - ~~[3]~~*(c).* Require the applicant to submit an environmental impact statement.

- 3) *“State Environmental Review Process” shall take the same meaning as “process of environmental review”.*

Sec 13. NAC 445A.67555 is hereby amended to read as follows:

NAC 445A.67555 “Transient water system” defined. “Transient water system” [~~means a noncommunity water system that serves fewer than 25 of the same persons over a 6-month period.~~] *has the meaning ascribed to it in NRS 445A.848.*

Sec 14. NAC 445A.67556 is hereby amended to read as follows:

NAC 445A.67556 “User charge” defined. “User charge” means:

1. Any charge levied on the users of a water project; or
2. Any portion of the ad valorem taxes that are paid by a user for [~~his or her~~] *their* proportionate share of the cost of operation and maintenance of a water project, including, without limitation, replacement of the water project.

Sec 15. NAC 445A.67561 is hereby amended to read as follows:

NAC 445A.67561 Eligibility for short-term or long-term loan for certain types and costs of water projects; limitations; extension of long-term loan.

1. The Division shall provide an applicant with a short-term or long-term loan from the Account for the Revolving Fund for a water project pursuant to the criteria set forth in this chapter and chapter 445A of NRS.
2. The Division shall determine the eligibility of a water project to receive a loan from the Account for the Revolving Fund before the Division establishes the priority list pursuant to NAC 445A.67567 to 445A.67571, inclusive.

3. Any change made by an applicant to the design of ~~his or her~~ *the* proposed water project which the applicant makes after the Division has determined that the water project is eligible for a loan, but before the Board for Financing Water Projects has committed to a loan contract, must be reported by the applicant to the Division not later than 15 days after the applicant changes the design. The Division may decide that a water project is no longer eligible for a loan based upon the design changes.

4. Water projects that are eligible for a loan from the Account for the Revolving Fund are limited to systems which are not owned by the Federal Government that are:

- (a) Publicly or privately owned community water systems; or
- (b) Nonprofit, noncommunity water systems.

5. Water projects that are eligible for a loan from the Account for the Revolving Fund include, without limitation, water projects which:

- (a) Facilitate compliance with the health protection objectives of 42 U.S.C. § 300j-12(a)(2);
- (b) Facilitate compliance with NAC 445A.453 and 445A.455;
- (c) Replace aging infrastructure, if such infrastructure is needed to maintain compliance with or to further the public health protection goals of:
 - (1) The Safe Drinking Water Act;
 - (2) The provisions of NAC 445A.450 to 445A.540, inclusive; or
 - (3) The provisions of NAC 445A.65505 to 445A.6731, inclusive;
- (d) Consolidate water supplies; or
- (e) Facilitate the purchase of a portion of the capacity of another system to improve the cost efficiency of a public water system.

6. An applicant may be eligible to receive a loan from the Account for the Revolving Fund if the water project involves:

(a) The replacement, rehabilitation or enhancement of an existing system for the collection, pumping, treatment, storage or distribution of water, or portions thereof, which is deemed necessary by the Division for the integrity and performance of the public water system to satisfy the requirements of NAC 445A.450 to 445A.6731, inclusive; or

(b) The creation of a new distribution system designed primarily to serve residents within an existing water system who are using domestic wells which have public health or water quality problems. Such a distribution system must provide sufficient existing or planned capacity for the development, treatment and storage of the new water of the system. The applicant shall provide assurances acceptable to the Division that the existing population in the service area of the public water system currently obtaining its water from domestic wells will connect to the new distribution system within a reasonable time after completion of the water project.

7. The Division shall decide on a case-by-case basis the costs for which an applicant may receive a loan. The costs of a water project for which an applicant may receive a loan from the Account for the Revolving Fund include, without limitation, costs for:

- (a) Planning and design;
- (b) Construction management, including, without limitation, inspection;
- (c) Water project facilities;
- (d) Land and rights-of-way or easements that are necessary to complete the water project;
- (e) The preparation of any environmental documents that the Division or any other state or federal agency requires;
- (f) Legal and financial services; and

(g) The administration of a water project, including, without limitation, expenses relating to draws on the loan and the preparation of certified payroll reports.

8. The Division may extend the term of a long-term loan to ~~[30]~~ 40 years *or the life of the asset, whichever is shorter*, under special conditions for a disadvantaged community.

9. As used in this section:

(a) “Domestic use” has the meaning ascribed to it in NRS 534.013.

(b) “Domestic well” means a well that supplies water for domestic use.

Sec 16. NAC 445A.67563 is hereby amended to read as follows:

NAC 445A.67563 Ineligibility for financial assistance for certain costs associated with water project. *Unless expressly authorized by the federal government*, ~~[F]~~ the Division shall not provide financial assistance from the Account for the Revolving Fund for the following costs associated with a water project:

1. The construction or rehabilitation of a dam;
2. The purchase of water rights, unless the water rights are owned by a public water system that is being purchased in an effort to consolidate as part of a program to develop the capability of a water system;
3. The construction or rehabilitation of a reservoir other than:
 - (a) A finished water reservoir; or
 - (b) A reservoir that is part of the treatment process and is located on the property where the treatment facility is located;
4. Laboratory fees for routine monitoring of water quality;
5. Expenses for operations and maintenance;
6. A project needed primarily for fire protection;

7. A water project for a public water system that lacks adequate capability, unless the financial assistance will ensure that the system acquires adequate capability;
8. A water project for a system that is in significant noncompliance with NAC 445A.453, unless the financial assistance will ensure full compliance;
9. A project that is primarily intended to serve future growth;
10. Refinancing of a private system; or
11. A project that has received assistance pursuant to the provisions of 42 U.S.C. § 300j-12(i).

Sec 17. NAC 445A.67566 is hereby amended to read as follows:

NAC 445A.67566 Solicitation and submission of proposals for water projects and requests to remain on priority list; duties following receipt; preapplication.

1. At least annually, the Division shall solicit from public water systems:
 - (a) Proposals in the form of preapplications for water projects *submitted through the Nevada Infrastructure Financial System at <https://ndepifs.ndep.nv.gov/Default>, or in a manner required by the division*; and
 - (b) ~~[Written requests;]~~ *Requests* from each applicant whose water project is currently on a priority list, to be included on the next priority list. *Requests must be submitted to the division through the Nevada Infrastructure Financial System at <https://ndepifs.ndep.nv.gov/Default>, or in a manner required by the division.* If an applicant has prepared an updated estimate of the cost for the water project, the applicant shall submit the updated estimate of the cost for the water project with the ~~[written]~~ request to be included on the next priority list.
2. If an applicant whose water project is currently on a priority list fails to submit a ~~[written]~~ request to be included on the next priority list pursuant to the provisions of subsection 1, the water project is subject to exclusion from the next priority list.

3. After receiving proposals for water projects and ~~written~~ requests to remain on the priority list pursuant to subsection 1, the Division shall:

(a) Establish eligibility of each water project and applicant to receive financial assistance;

(b) Determine the rank of each water project and request to receive financial assistance on the priority list in accordance with the provisions of NAC 445A.67567 to 445A.67571, inclusive;
and

(c) Submit the priority list to the Board for Financing Water Projects.

4. If a proposed water project includes multiple phases, the applicant shall file a separate preapplication for each phase.

5. The preapplication must include, without limitation:

(a) The name, address and telephone number for the applicant or a representative of the applicant;

(b) A description of the proposed water project that indicates the project shall address specific public health concerns or problems;

(c) A map showing the location of the service area for the public water system and the water project;

(d) If an estimate has been prepared by a professional engineer of the total cost of the water project, a copy of the estimate of the total cost of the water project;

(e) The estimated schedule for completion of the water project;

(f) Evidence of readiness of the applicant to proceed;

(g) The number of service connections currently being served by the public water system of the applicant;

(h) An estimate of the size of the population that is currently being served by the public water system of the applicant;

(i) Any other anticipated sources of funding for the water project from a state or federal agency or other entity;

(j) ~~[The median household income for the community or area that will be served or for the county in which the water project is located]~~ *Economic and demographic data that will assist the division in evaluating the project for qualification as a disadvantaged community*, including, without limitation, the source of that information;

(k) The anticipated impact of the costs of the water project to the rates or user charges for existing customers;

(l) The anticipated source of revenue to pay the principal and interest on the loan, including, without limitation, a description of any authorization that may be required to use that revenue for such a purpose; and

(m) Any additional information necessary to establish the priority rank for the water project.

6. The owner or an authorized representative of the owner or governing or managing body of a public water system shall sign the preapplication.

7. The Division shall maintain all requests and proposals that an applicant submits pursuant to this section at the main office. The Division shall make the files available to the public.

(Added to NAC by Bd. of Health by R067-98, eff. 7-23-98; A by Environmental Comm'n by R128-04, 2-14-2005; R099-14, 10-24-2014)

Sec 18. NAC 445A.67567 is hereby amended to read as follows:

NAC 445A.67567 Priority list: Development; consideration of water projects for funding; revision.

1. At least annually, the Division shall develop a statewide priority list of water projects from the solicitation process described in NAC 445A.67566. The Division shall prioritize the list to achieve water quality and public health goals consistent with the requirements of the Safe Drinking Water Act.

2. Only those projects that are included on the priority list will be considered for possible funding. Placement on the list does not guarantee that a project will receive funding.

3. If the Division receives a preapplication or a written request to remain on the priority list pursuant to the provisions of subsection 1 of NAC 445A.67566 after the annual statewide priority list of water projects has been developed, the Division may, after holding a public participation workshop pursuant to NAC 445A.67558 to allow for a period of public review and with the approval of the Board for Financing Water Projects, revise the priority list to include the water project.

4. If the Division receives a preapplication or a written request to be added to the priority list due to an “emergency situation,” as defined by NAC 445A.67527, the Division may, with the approval of the Board for Financing Water Projects, revise the priority list to include the project experiencing an emergency situation without holding a public participation workshop.

[4]5. The Division may at any time after receiving approval from the Board for Financing Water Projects revise the ranking of a water project on a priority list if the Division receives information concerning a water project that was not available at the time the list was developed.

Sec 19. NAC 445A.67569 is hereby amended to read as follows:

NAC 445A.67569 Priority list: Criteria for ranking water projects; prioritizing requests for certain financial assistance.

1. The Division shall rank water projects using the following criteria:

(a) The Division shall determine whether each water system qualifies as a public water system pursuant to 42 U.S.C. § 300j-12 to satisfy the requirements set forth therein to receive loan assistance.

(b) The Division shall place each water project into one of the following four classes:

(1) A Class I water project is intended to address *acute health* problems, including, without limitation, demonstrated illness attributable to the public water system, significant noncompliance, a court-ordered compliance or acute health concerns related to meeting the water quality requirements of NAC 445A.453. The Division shall prioritize Class I water projects, giving projects with a higher score priority over projects with a lower score, according to the total score each receives for:

(I) Demonstrated illness attributable to the public water system, significant noncompliance, a court-ordered compliance or acute health concerns related to meeting the water quality requirements of NAC 445A.453, 5 points;

(II) Demonstrated or documented noncompliance with the rules governing the maximum contaminant levels of microbiological contaminants found in 40 C.F.R. § 141.63, 4 points;

(III) Being subject to an order to boil water issued under the authority of the Chief Medical Officer, 4 points;

(IV) Demonstrated or documented noncompliance with the rules governing the filtration and disinfection of surface water found in 40 C.F.R. §§ 141.70 to 141.75, inclusive, 3 points;

(V) Demonstrated or documented noncompliance with the rule governing the maximum contaminant levels of nitrate found in 40 C.F.R. § 141.62(b)(7)-(b)(9), 2 points; and

(VI) Any other factor as provided in the intended use plan established for the year in which the priority list is developed, *1 point each*.

(2) A Class II water project is intended to address chronic health concerns by satisfying the requirements for water quality set forth in NAC 445A.453 and 445A.455. The Division shall prioritize Class II water projects, giving projects with a higher score priority over projects with a lower score, according to the total score each receives for:

(I) Demonstrated or documented noncompliance with any one of the requirements for water quality set forth in NAC 445A.453, 10 points each;

(II) Exceeding any one of the secondary drinking water standards found in NAC 445A.455, 1 point each; or

(III) Any other factor as provided in the intended use plan established for the year in which the priority list is developed, *1 point each*.

(3) A Class III water project is intended to address deteriorated, substandard or inadequate conditions in the public water system. The Division shall prioritize Class III water projects, giving projects with a higher score priority over projects with a lower score, according to the total score each project receives for the following types of water projects:

(I) The consolidation of water supplies or facilities to eliminate water supplies that are contaminated, eliminate facilities that do not meet state regulations, or enable systems through a physical or management consolidation to comply with technical, managerial and financial capability requirements, 25 points;

(II) The rehabilitation or replacement of treatment facilities that would improve the quality of drinking water to avoid noncompliance with NAC 445A.453 and 445A.455, 20 points;

(III) The rehabilitation, replacement or development of production facilities to replace contaminated sources, 15 points;

(IV) The installation or upgrading of storage facilities associated with finished water reservoirs and reservoirs that are part of a water treatment facility and located on the property where the treatment facility is located to prevent microbiological contaminants from entering the water system, 10 points;

(V) The installation or replacement of transmission pipes to prevent contamination caused by leaks or breaks in the pipes or to improve water pressure to satisfy the requirements of NAC 445A.6672, 8 points;

(VI) The installation or replacement of distribution pipes to prevent contamination caused by leaks or breaks in the pipes or to improve water pressure to satisfy the requirements of NAC 445A.6672, 6 points;

(VII) The installation of equipment, facilities or devices to prevent contamination by backflow or cross-connections and to satisfy the requirements of NAC 445A.67185 to 445A.67255, inclusive, 4 points;

(VIII) The installation of metering, if the metering is intended to satisfy the requirements of water conservation plans developed to comply with NRS 540.121 to 540.151, inclusive, 704.662, 704.6622 and 704.6624, 3 points;

(IX) The installation or upgrading of security-related equipment, facilities or devices, 3 points;

(X) The installation of computer control for the water system, 3 points;

(XI) Any work intended to correct any noncompliance by the water system with applicable state or federal statutes or regulations or facilitate the enforcement of such statutes or regulations, 3 points; and

(XII) Any other factor as provided in the intended use plan established for the year in which the priority list is developed, *1 point each*;

(4) A Class IV project consists of refinancing any existing debt that was incurred after July 1, 1993, pursuant to 42 U.S.C. § 300j-12(f)(2).

(c) Regardless of the class in which a water project is placed and in addition to the criteria applicable to the project pursuant to paragraph (b), a project must be scored in accordance with the following criteria:

(1) For the water system having mapped its facilities and analyzed risks of failure in the system, the expected dates for renewing and replacing its facilities and equipment, and the sources and amounts of money needed to finance the operation, maintenance and capital expenditures of the system, **[+]**5 points.

(2) For the water system having developed a rate structure appropriate to build, operate and maintain the system, **[+]**5 points.

(3) For the water system having specifically allocated money for the rehabilitation and replacement of aging or deteriorating facilities and equipment, **[+]**5 points.

2. The Division shall rank water projects first according to which class the project is in, with Class I water projects having the highest priority and Class IV water projects having the lowest priority, and then within the class according to the point total each water project receives pursuant to the ranking system set forth in subsection 3.

3. Within each class, the water projects will be ranked according to the type of public water system the project will affect in the following order:
 - (a) Community public water systems;
 - (b) Nonprofit, nontransient water systems; and
 - (c) Nonprofit, transient water systems.
4. The Division shall not move a water project from one class to another based on the ranking the water project receives from the total points within each class.
5. ~~[The product of the initial rank number of a water project within a class of water projects and the ratio of the state median household income to the median household income that is associated with the service area served by the public water system determines the final rank number associated with the water project within each class.]~~ *If the project is benefiting a disadvantaged community, then an additional 25 points will be added to the total points of the project to determine the final rank number associated with the water project within each class.*
6. If two or more water projects within the same class have the same final rank number, the water project that is associated with the service area with the highest population shall be deemed to be ranked higher within the class.
7. The Division may also provide financial assistance pursuant to NAC 445A.67562 for planning and engineering to determine causes of problems in the public water system and to define and carry out solutions. The Division shall prioritize such a project in the order appropriate to the problem that the water project is intended to solve.

Sec 20. NAC 445A.6757 is hereby amended to read as follows:

NAC 445A.6757 Priority list: Approval required; public review and comment; development of final or revised list; correction of minor errors.

1. Except as otherwise provided in subsection 4, the priority of water projects determined by the Division pursuant to NAC 445A.67567 to 445A.67571, inclusive, is subject to the approval of the Board for Financing Water Projects.
2. Except as otherwise provided in subsection 4 *and 5*, the Division shall hold a public participation workshop pursuant to NAC 445A.67558 to allow for a period of public review of and to comment on its proposed priority list or a revised priority list.
3. The Division shall consider comments and recommendations made in the public participation process in developing its final priority list or a revised priority list to be presented to the Board for Financing Water Projects.
4. The Division may, without obtaining the approval of the Board for Financing Water Projects or holding a public participation workshop, revise a priority list to correct minor typographical or technical errors.
5. *The Division may, after obtaining the approval of the Board for Financing Water Projects, add projects to the priority list that meet the requirements for an “emergency situation,” as defined by NAC 445A.67527, without holding a public participation workshop.*

Sec 21. NAC 445A.67571 is hereby amended to read as follows:

NAC 445A.67571 Priority list: Submission for review and possible approval; objections to proposed list.

1. After the Division [~~finalizes the priority list~~] *completes a* [~~and at least 5 working days before the meeting of the Board for Financing Water Projects~~] *public participation workshop, and at least 3 working days before the meeting of the Board for Financing Water Projects*, the Division shall submit the priority list to the Board for review and possible approval. *The priority list becomes final after approval by the Board.*

2. Any objection to the proposed priority list that is not resolved by the Division before the meeting of the Board for Financing Water Projects may be made orally at the meeting of the Board.

Sec 22. NAC 445A.67573 is hereby amended to read as follows:

NAC 445A.67573 Bypassing water project on priority list.

1. The Division may bypass a water project on the priority list if it determines that the water project is not ready to proceed or the applicant for the project:

(a) Withdraws the water project; or

(b) Fails to file a letter of intent as required pursuant to NAC 445A.67577 and 445A.67578.

2. If the Division determines that the water project is not ready to proceed, the Division shall provide notice of its determination to the applicant. After receiving notice, the applicant must respond to the Division within 30 days.

3. If the applicant files an objection in the response provided for in subsection 2 that cannot be resolved by the Division, the Division shall request that the matter be heard at the next meeting of the Board for Financing Water Projects for hearing and resolution. The Division shall provide at least 15 days' notice of the meeting to the affected applicant.

4. The Division may bypass a water project on the priority list in favor of a project that meets the definition of an "emergency situation," as defined in NAC 445A.67527. The Division will provide notice of the emergency declaration to all applicants on the priority list that are being bypassed.

Sec 23. NAC 445A.67575 is hereby amended to read as follows:

NAC 445A.67575 Intended use plan: Preparation; contents. An intended use plan must be prepared by the Division which describes how all money deposited into the Account for the Revolving Fund and the Account for Set-Aside Programs will be used. The intended use plan must include a description of:

1. How all money that is made available to the Account for the Revolving Fund and the Account for Set-Aside Programs will be used, including, without limitation, money from the following sources:

(a) Capitalization grants; and

(b) State matching funds, including, without limitation, gifts, appropriations, contributions, grants and bequests of money from any public or private source;

2. How loan repayments will be made;

3. How interest earnings and bond proceeds will be handled;

4. The criteria and method used for the distribution of funds;

5. The financial status of the program;

6. The short- and long-term goals of the program;

7. The amounts of money transferred between the Account for the Revolving Fund and the Account to Finance the Construction of Treatment Works and the Implementation of Pollution Control Projects created pursuant to [NRS 445A.120](#);

8. The state definition for a disadvantaged community as defined by Section 1.

[8]9. Any program for a disadvantaged community and the funds utilized for this type of assistance;

[9]10. The method employed by the Division to rank water projects on the priority list;

[10]11. Priority lists for:

(a) If a water project is ready to proceed in the year in which the priority list is developed, water projects that will receive funding in the first year after the grant award; and

(b) Water projects that are eligible for funding in future years;

~~[11]~~12. Procedures for altering the status of water projects on the priority list, including, without limitation, the addition of water projects addressing emergency situations; and

~~[12]~~13. The process used to obtain public review of and comment on the intended use plan and a summary of responses to any substantial public comments received.

Sec 24. NAC 445A.67577 is hereby amended to read as follows:

NAC 445A.67577 Filing of letter of intent. After the priority list is approved by the Board for Financing Water Projects pursuant to NAC 445A.67571, each applicant on the priority list that wishes to proceed with an application for financial assistance for a proposed water project must file with the Division a letter of intent meeting the requirements of NAC 445A.67578. *The letter of intent must be submitted to the division through the Nevada Infrastructure Financial system at <https://ndepifs.ndep.nv.gov/default>, or in a manner required by the division.*

Sec 25. NAC 445A.67578 is hereby amended to read as follows:

NAC 445A.67578 Letter of intent: Contents; ~~[mailing]~~ *transmission*; effect when intent to proceed with project.

1. The letter of intent must include:

(a) The name, postal address, electronic mail address and telephone number of each applicant;

(b) The title or name, the location and a brief description of the proposed water project, including, without limitation, maps or preliminary plans;

- (c) The number of residential service connections with population served and the number of nonresidential service connections with population served;
 - (d) A preliminary estimate of the cost of the water project improvement and any additional costs necessary for financing the water project improvement;
 - (e) Preliminary environmental information on a form provided by the Division;
 - (f) A description of future improvements planned by the applicant, if any, that are not part of the capital improvement for which the application is made;
 - (g) A brief description of how the water project improvement would make the system comply with the requirements for public water systems;
 - (h) A statement that the plan of water conservation adopted pursuant to NRS 540.121 to 540.151, inclusive, or 704.662, 704.6622 and 704.6624 will be, or has been, filed with the appropriate regulatory body before receipt of the loan;
 - (i) The anticipated schedule for filing an application;
 - (j) A request to determine whether the water project is eligible for a categorical exclusion;
 - (k) Whether the applicant requests a preapplication conference with the Division;
 - (l) Any additional information required by the Division; and
 - (m) A brief description of any material changes to the water project that were proposed in the preapplication.
2. The letter of intent must be ~~mailed to the Division of Environmental Protection, Drinking Water State Revolving Fund.~~ *submitted to the Division in a manner and form prescribed by the Division.*
3. The applicant's letter of intent to proceed with the proposed water project serves as a request to the Division to:

(a) If a preapplication conference is requested or determined to be required pursuant to the provisions of NAC 445A.67579, schedule the preapplication conference; and

(b) Initiate the process of environmental review pursuant to NAC 445A.6758 to 445A.67612, inclusive.

Sec 26. NAC 445A.67584 (pursuant to R186-18 that became effective January 30, 2019 and codified in the permanent regulations May 10, 2022. These codifications are pending update on the website) is hereby amended to read as follows:

NAC 445A.67584 Categorical exclusion: Public notice; period for public comment. (NRS 445A.270, 445A.295)

1. If the Division determines that a water project is eligible for a categorical exclusion pursuant to NAC 445A.67583, the Division shall provide notice of its intent to grant the categorical exclusion.

2. The notice that the Division provides pursuant to subsection 1 must be:

(a) Unless otherwise required by federal law, published on an Internet website designed to give general public notice;

(b) Provided to persons potentially affected by the water project, including, without limitation, adjacent landowners;

(c) Mailed by the Division to each person included on a mailing list maintained by the Division;

(d) Provided to appropriate federal and state agencies; and

(e) Submitted to the state clearinghouse for review by other federal and state agencies.

3. The notice must include:

(a) A description and location of the proposed water project, or proposed action or determination of the Division;

- (b) Reasons supporting the Division's preliminary determination of eligibility of a water project for categorical exclusion;
- (c) A statement that the Division may grant a categorical exclusion and the process of environmental review shall be deemed to be complete if no comments that the Division determines to be significant are received within the time allowed for public comment;
- (d) A statement of whether the water project is being funded in whole or in part by federal funds;
- (e) The time that the Division will allow for public comment; and
- (f) The address to which written comments may be sent.

(g) The electronic address to which comments may be sent.

4. The period for public comment concerning the determination that a water project is eligible for categorical exclusion is ~~[30]~~*15* days after the Division has provided the notice in the manner set forth in subsection 2.NAC 445A.67584

Sec 27. NAC 445A.67598 is hereby amended to read as follows:

NAC 445A.67598 Environmental impact statement: Issuance of final determination of completion of environmental review; response to public comments.

1. If no significant comments are received by the Division within ~~[the time prescribed in NAC 445A.67597;]~~*45 days*, the Division may issue its final determination that the process of environmental review is complete.
2. The Division shall:
 - (a) Review all comments that it receives within the time prescribed in NAC 445A.67597;
 - (b) Respond to any of those comments which it deems significant; and
 - (c) Provide those responses to the applicant for incorporation into the final environmental impact statement.

Sec 28. NAC 445A.67613 is hereby amended to read as follows:

NAC 445A.67613 Filing and contents of application; submission of additional information.

1. An applicant may make a formal request for financial assistance from the Account for the Revolving Fund by filing with the Division an application at any time after the applicant has filed the letter of intent pursuant to the provisions of NAC 445A.67577.
2. An application for a short-term loan submitted pursuant to NAC 445A.67562 must include, without limitation:
 - (a) The name, postal address, electronic mail address and telephone number of the applicant or a legal representative of the applicant;
 - (b) A brief description of the proposed water project, including, without limitation, its effect on the public water system;
 - (c) A brief description of the need for water project planning, design and other related costs;
 - (d) The estimated costs for the request;
 - (e) Information necessary to understand the alternatives to be considered and their environmental impact;
 - (f) Information about the financial history and financial projections of the applicant, as necessary for the Division to determine the creditworthiness of the applicant;
 - (g) Information necessary for the Division to determine how the loan is to be repaid; and
 - (h) Any other information deemed necessary by the Division.
3. An application for a long-term loan submitted pursuant to NAC 445A.67561 must include, without limitation:
 - (a) The name, postal address, electronic mail address and telephone number of the applicant or the legal representative of the applicant.

- (b) A brief description of the proposed water project, including, without limitation, its anticipated effect on the public water system.
- (c) The number of service connections and estimated population currently served by the applicant.
- (d) An estimate of the number of service connections and future population to be served by the water project for the useful life of the water project.
- (e) Maps of appropriate scale to show clearly the location of the proposed water project with respect to other identifiable topographical or geographical features in the service area of the public water system.
- (f) A complete and legible legal description of the entire area of service for the water project improvement, including, without limitation, a map showing the layout of the water project with clear reference to aerial or other maps showing sections and townships.
- (g) Proof of ownership, rights-of-way, easements or agreements showing that the applicant holds or is able to acquire all land, other than public land, or acquire interests therein and any water rights necessary for the construction of the proposed water project. Copies of deeds to land to be occupied, records of surveys, easements, agreements or permits to appropriate water granted pursuant to chapters 533 and 534 of NRS may be used as evidence of ownership.
- (h) A description of how the water project complies with planning and zoning requirements.
- (i) A copy of the current plan of water conservation adopted by the applicant pursuant to NRS 540.121 to 540.151, inclusive, or 704.662, 704.6622 and 704.6624, as applicable, and an analysis of the effectiveness of the plan.
- (j) A description of the best available technology for the water project being proposed.

(k) An itemized estimate of the total cost of the water project that is prepared by a professional engineer.

(l) Information sufficient to demonstrate, through a systematic and cost-effective analysis of alternatives that are feasible, that the alternative selected is the most effective means of meeting the applicable water quality and public health requirements over the design life of the facility.

(m) A preliminary water project schedule that provides a timetable for:

- (1) Advertising and opening bids;
- (2) The start of the construction phase;
- (3) The drawdown of money in the Account for the Revolving Fund;
- (4) The estimated schedule of progress payments to the contractor and other costs related to the drawdown of money in the Account for the Revolving Fund;
- (5) Completion of the construction phase; and
- (6) Initiation of the operation of the water project.

(n) Information necessary for the Division to determine how the loan is to be repaid, including, without limitation:

- (1) A proposed revenue program that demonstrates the cost effect on users of the public water system, including, without limitation, any connection fees or changes in user charges;
- (2) Orders or resolutions specifying the method of loan repayment from the appropriate governing board, regulatory agency or local governing body having rate jurisdiction;
- (3) Contractual loan agreements; or
- (4) Any other information requested by the Division.

(o) Estimated costs of future expansion and long-term needs for reconstruction of facilities following their design life.

- (p) A summary of public participation in the development of the proposed water project.
 - (q) Institutional and management arrangements required for successful implementation of the water project.
 - (r) A report on the status of the process of environmental review for the project.
 - (s) A list of any required permits and a schedule of when those permits will be obtained.
 - (t) Information about the financial history and financial projections of the applicant, as necessary for the Division to determine the creditworthiness of the applicant.
 - (u) Copies of current capital improvement plans and debt management policies as provided to the Department of Taxation pursuant to chapter 350 of NRS and any applicable regulation.
 - (v) Security for the loan, if applicable.
 - (w) Evidence that the public water system has the capability to comply with the Safe Drinking Water Act and NAC 445A.450 to 445A.6731, inclusive.
4. To ensure a complete application, the applicant shall submit any other information deemed necessary by the Division.
 5. The information required pursuant to paragraph (l) of subsection 3 must include, without limitation:
 - (a) A description of how the alternatives listed will meet the water quality and public health needs, including, without limitation, an estimate of any future growth expected after the water project becomes operational;
 - (b) An estimate of how improving the operations, maintenance and efficiency of existing facilities will improve the performance of the public water system compared to how much the performance would be improved by constructing new facilities;

(c) A description of any opportunities the water project will provide to reduce the use of energy or to recover energy;

(d) An estimate of the total capital costs and the annual operation and maintenance costs; and

(e) An estimate of the annual or monthly costs to residential, commercial and industrial users during the ~~[20 years]~~ *term of the proposed loan* after completion of the water project.

6. An applicant shall consider the present worth or equivalent annual value of all capital, operation and maintenance costs when satisfying the requirements of paragraph (l) of subsection 3.

7. The forecasts of population that an applicant provides pursuant to paragraph (l) of subsection 3 must be consistent with any forecasts of population that the state demographer has prepared.

8. As used in this section, “best available technology” means the technology, treatment technique or procedure that the EPA finds is the most appropriate and most cost-effective for solving a particular problem after examining the efficacy of the technology, technique or procedure under laboratory and field conditions.

Sec 29. NAC 445A.676144 is hereby amended to read as follows:

NAC 445A.676144 System of user charges. Any system of user charges proposed by an applicant must:

1. Be designed to produce the money required for the costs of operation, maintenance and replacement of the water project and public water system;

2. Provide that each user or class of users shall pay its proportionate share of the costs of operation, maintenance and replacement of the water project and public water system; and

3. Include an adequate system of financial management that will account accurately for revenues generated by the system and expenditures for operation, maintenance and replacement based on an adequate budget identifying the basis for determining the annual cost of operation and maintenance, including, without limitation, the cost of personnel, equipment, services, supplies, energy and administration, and replacement of facilities that have exceeded their useful life.

4. *The Division may require a reserve account for capital replacement to satisfy financial capacity requirements within the system as set forth in NAC 445A.67614(1)(b).*

5. *The Division may require a debt service reserve to satisfy financial capacity requirements within the system as set forth in NAC 445A.67614(1)(b).*

Sec 30. NAC 445A.67619 is hereby amended to read as follows:

NAC 445A.67619 Final review of application; submission of written report and recommendation to Board for Financing Water Projects; request for hearing. The Division shall:

1. Review the completed application and any records and other documents submitted by the applicant concerning the water project to evaluate whether:

(a) The proposed water project is feasible from an engineering and legal standpoint, is economically justified and is financially feasible;

(b) There is adequate assurance that the applicant can repay the loan;

(c) The applicant has taken sufficient and reasonable efforts to determine whether the proposed water project conflicts with any regional master plan of any local, state or federal governing authority, and those efforts have not revealed such a conflict; and

(d) If revenue bonds are to be issued, the applicant has executed a legally binding statement not to undertake to commit the State and any other political subdivision or municipality, other

than the applicant, to incur any pecuniary liability in connection with the repayment of the bonds.

(e) If the entity is not issuing a bond, the applicant has executed agreements for the security and collateral required by the Division.

2. Submit the report required pursuant to NAC 445A.67618 to the Board for Financing Water Projects with a recommendation that the Board:

- (a) Approve the commitment of funds requested by the applicant;
- (b) Approve the commitment of funds requested by the applicant with conditions; or
- (c) Deny the commitment of funds requested by the applicant.

3. Request the Chair of the Board for Financing Water Projects to convene a public hearing by the Board on the matter.

Sec 31. NAC 445A.67622 is hereby amended to read as follows:

NAC 445A.67622 Loan contract: Conditions for offer. The Division shall not offer a loan contract to an applicant until:

1. The Board for Financing Water Projects has issued its approval of the water project to the applicant; and

2. The applicant has:

(a) Submitted to the Division a definite schedule for the water project which includes:

(1) A reasonable period to complete the water project after the commencement of bidding;

and

(2) The times when funds are expected to be drawn from the Account for the Revolving

Fund; and

(b) If collateral for the loan is required, provided the collateral.

(c) If additional security for the loan is required, the applicant has provided the security.

Sec 32. NAC 445A.67628 is hereby amended to read as follows:

NAC 445A.67628 Adoption by reference of certain accounting pronouncements; maintenance of separate accounts for water projects.

1. The Commission hereby adopts by reference the most current pronouncements issued by the Governmental Accounting Standards Board, unless a pronouncement is disapproved by the Commission within 60 days after the date the pronouncement is published. The Commission will review each pronouncement to ensure its suitability for this State. A copy of the pronouncements is available [~~at a cost of \$105~~] from the Governmental Accounting Standards Board [~~, 401 Merritt 7, P.O. Box 5116, Norwalk, Connecticut 06856-5116 or by telephone at (800) 748-0659 or free of charge~~] at the Internet address <https://www.gasb.org/store>.

2. The Commission hereby adopts by reference the pronouncements issued by the Financial Accounting Standards Board on or before November 30, 1989. If the pronouncements issued by the Financial Accounting Standards Board on or before November 30, 1989, conflict with the most current pronouncements issued by the Governmental Accounting Standards Board adopted by reference pursuant to subsection 1, the pronouncements issued by the Governmental Accounting Standards Board apply. The pronouncements are available [~~, free of charge,~~] from the Financial Accounting Standards Board at the Internet address <https://www.fasb.org/store>.

3. A recipient shall maintain separate accounts for water projects in accordance with generally accepted accounting principles, including, without limitation, those adopted by reference in subsections 1 and 2.

Sec 33. NAC 445A.67636 is hereby amended to read as follows:

NAC 445A.67636 Participation by disadvantaged businesses: Generally.

1. A recipient shall comply with the requirements of federal law concerning the participation of disadvantaged businesses *if the project is satisfying federal equivalency requirements*.

2. ~~[Each]~~ A recipient shall attempt to comply with the fair share percentages established annually for disadvantaged businesses by the Division and the EPA. A recipient not meeting these goals shall submit evidence of compliance with the affirmative steps identified in NAC 445A.67637.

3. A recipient shall submit with ~~[his or her]~~ *the* request for approval to award a construction contract, a report of participation by disadvantaged businesses in the form prescribed by the Division. If the low bidder on any construction contract does not meet the fair share requirements for disadvantaged businesses, the recipient shall submit to the Division evidence of compliance by the bidder with the affirmative steps identified in NAC 445A.67637.

4. A recipient shall submit to the Division, in the form prescribed by the Division, a report of participation by disadvantaged businesses following any quarter during which a procurement of ~~[\$10,000 or more]~~ *the value required by federal requirements* is executed for the water project. As used in this subsection, “quarter” means a quarter in the federal fiscal year.

Sec 34. NAC 445A.67637 is hereby amended to read as follows:

NAC 445A.67637 Participation by disadvantaged businesses: Awarding of subcontracts. A recipient shall ensure that, if ~~[his or her]~~ *the* contractor for a water project awards any subcontracts relating to the water project *that is satisfying federal equivalency requirements*, the contractor takes affirmative steps to ensure that disadvantaged businesses are used to the extent possible as sources of supplies, equipment, construction and services. These affirmative steps must include:

1. Including such businesses on solicitation lists;
2. Ensuring that such businesses are solicited if they are potential sources;
3. Dividing total requirements, if economically feasible, into small tasks or quantities to permit maximum participation by disadvantaged businesses;
4. Establishing a schedule for the delivery of a requirement, if the requirement permits, to allow maximum participation by disadvantaged businesses;
5. Using the list of vendors certified through the federal Disadvantaged Business Enterprise Program, as maintained by the Department of Transportation, or an equivalent list of such vendors; and
6. Ensuring that all subcontractors for the water project comply with the provisions of subsections 1 to 5, inclusive.