

Permanent Regulation - Informational Statement

A Permanent Regulation Related to Environmental Programs

Legislative Review of Adopted Permanent Regulations as Required
by Administrative Procedures Act, NRS 233B.066

State Environmental Commission Permanent No: R115-22P

The Nevada State Environmental Commission (SEC) offers the following informational statement in compliance with Nevada Revised Statute (NRS) 233B.066.

1. Need for Regulation

The regulations proposed in R115-22 are needed to apply a realistic and appropriate set of beneficial uses and associated water quality criteria to the channels that are tributary to the Las Vegas Wash. Waters tributary to the Las Vegas Wash do not have a designated water quality standards table in the NAC. Water quality in these tributary channels has been assessed via the "tributary rule" (NAC 445A.1239), wherein the standards from the Las Vegas Wash (NAC 445A.2156) are carried up these tributary channels. However, these tributary channels have been greatly modified by the Clark County Regional Flood Control District (CCRFC) to act as flood-conveyance structures, and do not offer suitable habitat for aquatic life, nor are these channels safe for water contact recreation.

2. A description of how public comment was solicited, a summary of public response and an explanation of how other interested persons may obtain a copy of the summary.

The Division held one hybrid (in-person and virtual) public workshop for R115-22P on October 19, 2022. The public was invited to participate in person in the Bryan Building at 901 South Stewart Street in Carson City, Nevada and in the NDEP offices in Las Vegas at 375 East Warm Springs Road. NDEP also provided the option to attend the workshop virtually. The workshop was held to present the substance of, and receive public comment on, the proposed regulation. There were approximately 14 members of the public that attended the workshop, either in-person or virtually.

The Legislative Counsel Bureau published its draft, R115-22P, in the Nevada Register on July 25, 2022. The Division accepted written comments on R115-22P up to October 24, 2022. Of the significant comments the Division received regarding R115-22P, one was a verbal question, received during the workshop (see workshop summary, attached), which will be investigated further by NDEP, and two were written comments (via email and attached here as pdf). The written comments suggested changes to R115-22P. The

Division considered the comments and made green line edits to R115-22P as a result. All other comments received were positive. The Division also received a letter in support of this petition (attached).

The SEC held a hybrid regulatory hearing on December 14, 2022, to consider possible action on R115-22P. The SEC posted its public notice, which included a link¹ and instructions to access R115-22P and pertinent documents and information supporting the regulation, for the regulatory meeting at the State Library in Carson City, at Division offices located in both Carson City and Las Vegas, at all county libraries throughout the state, and to the SEC email distribution list. The SEC also posted the public notice at the Division of Minerals in Carson City, at the Department of Agriculture, on the LCB website, on the Division of Administration website, and on the SEC website.

The SEC also published the public notice in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting.

3. The number of persons who attended the SEC Regulatory Hearing:

- (a) Attended December 14, 2022, hearing: 57 (approximately)
- (b) Testified on this Petition at the hearing: 7

1. Dave Simpson, on behalf of the Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701
(775) 687-9548
dsimpson@ndep.nv.gov
2. Mary Siders, consultant to the Nevada Division of Environmental Protection
mary.siders@gmail.com
3. Barry Fulton, Benchmark Environmental LLC
266 Morgan Drive
McCall, ID 83638
Phone: 828 553 2829
4. John Tennert, Clark County Regional Flood Control District
600 Grand Central Pkwy, #300
Las Vegas, NV 89106
jtennert@regionalflood.eng

¹ <https://sec.nv.gov/meetings/sec-regulatory-meeting-december-14-2022>

5. John Solvie, Clark County Water Quality
5857 E. Flamingo Rd
Las Vegas, NV 89122
jsolvie@cleanwaterteam.com
6. Larry Bazel, representing Clark County Regional Flood Control District
235 Montgomery St., Ste 935
San Francisco, CA 94104
lbazel@briscoelaw.net
7. Todd Tietjen, Southern Nevada Water Authority
Participated remotely, no contact information available

(c) Submitted to the agency written comments: 4 (attached)

4. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses through one public workshop and at the December 14, 2022, SEC hearing as noted in number 2 above.

5. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The Commissioners unanimously adopted R115-22P with NDEP proposed changes. The regulation was adopted with changes because the public and the SEC were satisfied with the proposed amendments.

6. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.

Regulated Business/Industry. The regulatory amendments in R115-22P may have a slight beneficial economic impact on business.

Public. The regulatory amendments in R115-22P are not expected to have any economic effect on the public.

7. The estimated cost to the agency for enforcement of the adopted regulation.

Enforcing Agency. The regulatory amendments proposed in R115-22P are not expected to result in any additional costs to the Division.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The proposed amendments in R115-22P do not overlap or duplicate other state or government agencies.

9. If the regulation includes provisions which are more stringent than a federal regulation, which regulates the same activity, a summary of such provisions.

The regulatory amendments in R115-22P are not more stringent than existing federal regulations.

10. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

R115-22 does not address fees.

Las Vegas Valley Watershed Advisory Committee

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ENVIRONMENTAL PROTECTION

November 10, 2022

Mr. Tom Porta, Chairman, and Members of the Commission
Nevada State Environmental Commission
901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249

**SUBJECT: SUPPORT FOR REGULATORY PETITIONS R115-22, CHANNELS
TRIBUTARY TO LAS VEGAS WASH AND R116-22, LAS VEGAS WASH
SITE-SPECIFIC SELENIUM CRITERIA**

Dear Mr. Porta and Members of the Commission:

Thank you for the opportunity to comment on proposed regulatory petitions R115-22, Channels Tributary to Las Vegas Wash and R116-22, Las Vegas Wash Site-Specific Selenium Criteria. On behalf of the Las Vegas Valley Watershed Advisory Committee (LVVWAC), I am pleased to provide this letter encouraging the Nevada State Environmental Commission (SEC) to approve the two petitions.

The LVVWAC is composed of eight Southern Nevada water and wastewater agencies, including the cities of Henderson, Las Vegas, and North Las Vegas; Clark County; Clark County Regional Flood Control District; Clark County Water Reclamation District; Las Vegas Valley Water District; and the Southern Nevada Water Authority. The LVVWAC is responsible for overseeing and providing local funding for the Las Vegas Wash Coordination Committee's efforts to stabilize and enhance the Las Vegas Wash. These activities and responsibilities have been ongoing for more than 20 years.

When the SEC adopted statewide criteria for selenium in 2019, it included a provision giving stakeholders in southern Nevada and the Nevada Division of Environmental Protection (NDEP) three years to develop site-specific criteria for selenium for the Las Vegas Wash. This provision was necessary to give NDEP and stakeholders time to develop an approach to selenium that is adapted to the unique geologic and hydrologic characteristics of the Las Vegas Valley. LVVWAC member agencies have contributed more than \$214,000 to this effort. In addition, the NDEP allocated \$143,000 in federal grant funding to the effort. The research and analysis necessary to develop site-specific criteria for selenium in the Las Vegas Wash and establish beneficial uses for channels tributary to the Las Vegas Wash were used to complete the subject petitions.

The petitions before you reflect a long-term cooperative effort between state and local agencies to address important water quality issues in Southern Nevada. As a result, I encourage the SEC to approve the petitions.

Thank you for your consideration.

Sincerely,



Priscilla Howell, City of Henderson
Chairwoman, Las Vegas Valley Watershed Advisory Committee

JT/DV/nh

Las Vegas Valley Watershed Advisory Committee Members

Charles Trushel, City of Las Vegas

Tom Brady, City of North Las Vegas

Randy Tarr, Clark County

Steve Parrish, Clark County Regional Flood Control District

Tom Minwegen, Clark County Water Reclamation District

Colby Pellegrino, Las Vegas Valley Water District

Zane Marshall, Southern Nevada Water Authority



SOUTHERN NEVADA WATER AUTHORITY
 100 City Parkway, Suite 700
 Las Vegas, NV 89106

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**PRESORTED
 FIRST CLASS**



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Mr. Tom Porta, Chairman, and Members of the
 Commission
 Nevada State Environmental Commission
 901 South Stewart Street, Suite 4001
 Carson City, NV 89701-5249

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December 14, 2022

Nevada State Environmental Commission
901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249
Attn: Tom Porta, Chairman, and Members of the Commission

Subject: Support for Regulatory Petitions R115-22-Channels Tributary to Las Vegas Wash and R116-22 Las Vegas Wash Site-Specific Selenium Criteria

Dear Mr. Porta and Members of the Commission:

On behalf of the Stormwater Quality Management Committee (SQMC), we want to thank you for this opportunity to comment on proposed regulatory petitions R115-22, Channels Tributary to Las Vegas Wash and R116-22, Las Vegas Wash Site-Specific Selenium Criteria. The SQMC is a committee whose membership includes director level authorized representatives from each of the five co-permittees to the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System permit (NPDES Permit). This committee works cooperatively to ensure that the minimum requirements outlined in the NPDES Permit are met annually to remain in compliance with the Clean Water Act.

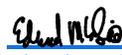
In 2019, the State Environmental Commission (SEC) approved statewide criteria for selenium pursuant to a petition from the Nevada Division of Environmental Protection (NDEP). Recognizing that the statewide criteria was not appropriate for the unique hydrologic and geologic characteristics of Southern Nevada, NDEP recommended that the SEC give NDEP and stakeholders in Southern Nevada three (3) years to develop site-specific criteria for the Las Vegas Wash. Since this time, NDEP has worked closely and collaboratively with stakeholders in Southern Nevada to develop both site-specific criteria for selenium as well as a workable approach water quality in the channels tributary to the Las Vegas Wash.

Both of the petitions before you are the result of extensive time, effort and financial resources committed by both NDEP and the Southern Nevada stakeholders. These petitions help solve important water quality problems in Southern Nevada. As a result, the petitions have the full support of the undersigned agencies and represent an important step forward for water quality.

Thank you very much for your consideration of these petitions.

Sincerely,


Steven C. Parrish, P.E.
General Manager/Chief Engineer
Regional Flood Control District


[Edward mcguire \(Nov 11, 2022 07:22 PST\)](#)
Ed McGuire, P.E.
Director of Public Works
City of Henderson

Denis Cederburg

[Denis Cederburg \(Nov 14, 2022 07:02 PST\)](#)

Denis Cederburg, P.E.
Director of Public Works
Clark County

Mike Janssen

[Mike Janssen \(Nov 29, 2022 06:48 PST\)](#)

Mike Janssen, P.E.
Executive Director of Infrastructure
City of Las Vegas

Dale Daffern

[Dale Daffern \(Nov 29, 2022 09:51 PST\)](#)

Dale Daffern, P.E.
Director of Public Works
City of North Las Vegas

cc: G. Lovato (by e-mail)
P. Comba (by e-mail)

**Public Workshop R114-22, R115-22 and R116-22
October 19, 2022**

Workshop Summary

The workshop was held in person and virtually over Microsoft TEAMS.

R114-22: NDEP staff (Weston) gave a PowerPoint presentation of the beryllium petition.

- One comment, given by Larry Bazel, was that Weston did a good job describing the difference between detection and reporting levels.

R116-22: NDEP staff (Weston) gave a PowerPoint presentation of the site-specific selenium petition before handing off the presentation to Ben Latham of Arcadis and Barry Fulton of Benchmark Environmental who went over how the site-specific criteria were developed and showing how the proposed criteria is protective of the aquatic life in the Las Vegas Wash. Following Ben and Barry's presentation, Weston showed what changes the petition makes to the NAC.

- Mary Sidors noted that any water body can have site specific selenium values using the EPA's selenium criteria guidelines.

R115-22: NDEP staff (Weston) gave a PowerPoint presentation explaining why the flood-conveyance channels need their own water quality standards before handing off the presentation to Ben Latham who went through the Arcadis and Benchmark Environmental report titled "Evaluation of existing and attainable uses for the tributaries to the lower Las Vegas Wash."

- Daniel Fischer – great presentation, I do have a question on beneficial use standards for the tributaries. The coliform standard might be exceeded. There is flow monitoring by MS4. Are we okay to meet Water Quality Standards?
 - NDEP will assess the new standards prior to the SEC hearing.
- Daniel – it was unbelievable how many people camp in those channels, though they try to keep them out.