

Permanent Regulation – Informational Statement

A Regulation Relating to Water Quality Standards

Legislative Review of Adopted Regulations as Required
by Administrative Procedures Act, NRS 233B.066 & 233B.0603.10(f)

State Environmental Commission (SEC) LCB File No: R103-14

Regulation R103-14:

On December 3, 2014, the SEC adopted a regulation modification related to the NDEP Bureau of Water Quality. The proposed regulation revises water quality standards for South Fork Humboldt River and South Fork Reservoir (NAC 445A.1464 – 445A.1466). Proposed changes include: 1) separate the South Fork Reservoir from the South Fork Humboldt River; 2) revise phosphorus criterion; 3) add numeric criteria for total nitrogen, Secchi depth, chlorophyll-a (algae biomass), nitrite, color, total suspended solids, turbidity, chloride, sulfate, and alkalinity; and 4) clarify that the dissolved oxygen criterion applies only in the epilimnion when the reservoir is stratified. Since its construction in 1989, South Fork Reservoir has been protected using the water quality standards of the South Fork Humboldt River. Given that the water quality characteristics of a reservoir differ from those of a stream, water quality standards designed for a reservoir were deemed necessary to appropriately protect the beneficial uses within South Fork Reservoir. In addition, criteria for additional parameters are proposed to properly protect the beneficial uses. These updated water quality criteria are based upon more recent data, scientific literature and guidance published by the United States Environmental Protection Agency (EPA).

1. Need for Regulation:

State law (NRS 445A.520) requires that standards be set at levels designed to protect beneficial uses for surface waters of the state. Nevada has been delegated authority to set water quality standards under the Clean Water Act and federal regulations (40CFR 131.20) require states to periodically review their water quality standards and as appropriate update those standards. A review of the available data, scientific literature and EPA guidance indicated that the proposed standards changes be made to protect the beneficial uses.

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.

On May 19 and May 21, 2014, NDEP conducted public workshops on NDEP's Draft Regulation. The workshops were held in Carson City and Elko. The meeting location in Carson City was at the Bryan Building located at 901 S. Stewart Street (Tahoe Conference Room) and the meeting in Elko was at the County library, located at 720 Court Street.

Four (4) members of the public commented at the Carson City workshop. Those people were:

Chris Donley, Cardno Entrix Consulting, Carson City
Rob Martinez, Nevada Division of Water Resources, Carson City
Bob Merged, Nevada Division of State Parks, Carson City
Stephanie Wilson, US EPA, Carson City

Five (5) members of the public commented at the Elko workshop. Those people were:

Randy Brown, Elko County, Elko
Glen Guttry, Elko County Commissioner, Elko
John Elliott, Nevada Department of Wildlife, Elko
Chuck Petersen, NRCS, Elko
Carol Evans, BLM, Elko

Questions were related issues related to water quality standards trumping water rights, tribes (other than Pyramid Lake Paiute Tribe) moving forward with their own standards, EPA's pending rule regarding Waters of the United States, and how the regulation might affect Reservoir operations.

There were no written comments.

Questions from the public presented at the workshop were addressed by NDEP staff; summary minutes of the workshop are posted on the SEC website at:

http://sec.nv.gov/docs/1214/R103_14_WorkshopMinutes.pdf .

Following the workshop, the SEC held a formal regulatory hearing on December 3, 2014 at the Nevada Department of Conservation and Natural Resources, 901 South Stewart Street, Carson City, Nevada. A public notice and agenda for the regulatory meeting was posted at the meeting location, at the State Library in Carson City, at the Office of the Division of Environmental Protection in Las Vegas, at the Division of Minerals in Carson City, at the Division of Wildlife, on the LCB website, on the Division of Administration website and on the SEC website.

Copies of the agenda, the public notice, and the proposed permanent regulation R103-14 were also made available at all public libraries throughout the state as well as to individuals on the SEC mailing list and the Bureau of Water Quality Planning electronic mailing list.

The public notice for the proposed regulation was published in the Las Vegas Review Journal and Reno Gazette Journal newspapers once a week for three consecutive weeks prior to the SEC regulatory meeting. Other information about this regulation was made available on the SEC website at: http://sec.nv.gov/main/hearing_1214.htm .

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

- (a) Attended December 3, 2014 hearing: 6 (approximately)
- (b) Testified on this Petition at the hearing: 1
- (c) Submitted to the agency written comments: 0

Person who testified at the hearing:
Mike L. Baughman
Humboldt River Basin Water Authority
PO Box 2008
Carson City, NV 89702
(775) 883-2051
mikebaughman@charter.net

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 e-mail, a public workshop and at the December 3, 2014 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 regulation was adopted without changes because the SEC determined, following extensive discussion, that the testimony provided at the hearing did not necessitate a change (see Number 2 above).

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

(a) Regulated Business/Industry. The proposed revisions are not expected to have any direct economic effect on the regulated community both immediate and long term. Water quality standards in of themselves do not directly regulate businesses, although standards do form the basis for effluent limits imposed by NDEP through the National Pollutant Discharge Elimination System (NPDES) permit program and the terms and conditions imposed through the Clean Water Act 401 program for any dredging or filling activity in Nevada waters. Currently, there are no active NPDES permits for discharges to South Fork Reservoir.

(b) Public. The proposed revisions are expected to have some beneficial economic effect on the public both immediately and long-term. Overall, the current water quality standards have beneficial effects in terms of protecting public health and welfare, and supporting aquatic, wildlife, and recreational uses. All of these factors provide economic benefits to the public. The proposed changes will provide additional protection of the beneficial uses, thereby improving the level of public benefit.

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

Implementation of the proposed regulations is not expected to result in additional cost to the agency for enforcement.

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.

There are no other state or government agency regulations which the proposed revisions duplicate.

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

There is no federal regulation for these proposed water quality standards revisions. The federal government has delegated responsibility for establishing water quality standards to NDEP. Setting the proposed water quality standards at levels to protect beneficial uses of surface waters of the State enables NDEP to maintain its delegation of the Clean Water Act.

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.

The regulation does not address fees.