

**PROPOSED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB FILE NO. R119-20I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/29/2020**

**PROPOSED REGULATION OF THE STATE
ENVIRONMENTAL COMMISSION**

P2020-06

June 29, 2020

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

AUTHORITY: §1, NRS 445A.425

Section 1 of P2020-06 describes the process to petition the SEC to classify certain surface waters of the state, which have exceptional or special water quality characteristics, ecological, aesthetic, recreational or historical value, as Ecological or Aesthetic Waters (EAWs).

Section 2 of P2020-06 describes the antidegradation policy which would be implemented as a component of the water quality standards to maintain and protect water quality in all surface waters of the State. The different levels of antidegradation protection, referred to as a tier of protection, are described in Section 2. The tier protection level that will be applied will depend on the water quality conditions in the surface water, and whether the waterbody has been classified as an Ecological or Aesthetic Water (EAW) per Section 1.

Section 1. Chapter 445A of NAC is hereby amended by adding thereto a new section to read as follows::

Extraordinary Ecological or Aesthetic Waters

1. A surface water or a portion of a surface water of the state that has exceptional ecological or aesthetic value may be classified as an Ecological or Aesthetic Water (EAW) based on the water having some or all of the following attributes:

- a. The water or a segment thereof has exceptional water quality conditions, unique water quality characteristic, or is of exceptional ecological or aesthetic significance relative to other surface waters of the state;*
- b. The water has recreational or historical significance, scenic or wilderness value, and classification as an EAW would be beneficial to the state of Nevada;*
- c. An endangered or threatened species is associated with the water and the existing water quality is essential to the maintenance and propagation of the species, or the surface water provides critical habitat for the species; or*
- d. The waterbody has an essential character or special use that makes the water an EAW.*

2. A surface water or a segment of a surface water of the state may be nominated for classification as an EAW by filing Form #1 with the Commission, per NAC 445B.886. The additional information that must accompany Form #1 to nominate a water as an EAW is contained in Nevada's Antidegradation Implementation Procedures, dated June 2020, and hereby adopted by reference.

3. *The following factors will be considered by the Commission during a public hearing when deciding to classify a surface water as an EAW and determining whether the EAW will be protected at Tier 3 or Tier 2.5 under the antidegradation policy in Section 2 :*

- a. *The degree to which the surface water has the exceptional ecological or aesthetic attributes as listed in Section 1.1, inclusive,*
- b. *Whether there is the ability to manage the surface water to maintain and protect the water quality conditions, special uses, or the ecological or aesthetic value of the water,*
- c. *The social and economic benefits and impacts associated with an EAW classification,*
- d. *The public comments in support of, or in opposition to, an EAW classification,*
- e. *The consistency of an EAW classification with applicable water quality management plans and existing water-use activities, and*
- f. *Preexisting land-use activities, adjacent and within the vicinity, of the nominated surface water.*

4. *Per NAC 445A.122, the classification of a water as an EAW shall not prohibit the use of the water as authorized under Title 48 of NRS, nor does it entitle an appropriator to require that the source meet his or her particular requirements for water quality.*

5. *The classification of a water as an EAW shall not prohibit or alter activities, which are authorized under a state or federal permit, related to management and maintenance of structures and devices in and on the water.*

6. *The following surface waters are classified as EAWs with the associated antidegradation protection level:*

<i>Surface Water Name</i>	<i>Region</i>	<i>Water Quality Standards</i>	<i>Antidegradation Tier Protection Level (per Section 2)</i>	<i>Date</i>
<i>Lake Tahoe (State of NV)</i>	<i>Truckee River Region</i>	<i>NAC 445A.1534</i>	<i>Tier 3</i>	<i>8-26-2008</i>

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

Antidegradation Policy. The following antidegradation policy applies to all surface waters of the State. This policy must not be used to prohibit use of the water as authorized under Title 48 of NRS, nor entitle an appropriator to require that the source meet his or her particular requirements for water quality. A level of protection, referred to as a tier of protection, will be applied to maintain and protect water quality conditions. The Division will determine the tier protection level to apply to a surface water on a parameter-by-parameter basis.

- 1. *Tier 3 protection. Existing water quality will be maintained and protected in a surface water or segment thereof that has been classified as an EAW, as defined in Section 1.*

This tier of protection prohibits any new or expanded direct point-source discharge and requires that any new or expanded point-source discharge upstream not lower the existing water quality in the EAW. Tier 3 protection requirements will not apply to the following situations:

- a. Discharges of direct sources authorized by the Division prior to classification as an EAW.*
 - b. The Division determines activities that may result in temporary or limited lowering of the water quality are necessary for long-term ecological or water quality benefit, or to accommodate public health and safety. Such activities shall be non-recurring and necessary controls will be implemented to minimize impacts to water quality and water quality values.*
- 2. Tier 2.5 protection. Existing water quality or the exceptional ecological, aesthetic or recreational value will be maintained and protected in a surface water or segment thereof that has been classified as an EAW, as defined in Section 1, that is not subject to Tier 3 protection requirements. This tier of protection does not preclude new or expanded point-source discharges where such sources, with or without treatment or controls, would have no effect on the existing water quality or value of the EAW. Tier 2.5 protection requirements will not apply to the following situations:*
 - a. Discharges of direct sources authorized by the Division prior to classification as an EAW.*
 - b. The Division determines activities that may result in temporary or limited lowering of the water quality are necessary for long-term ecological or water quality benefit, or to accommodate public health and safety. Such activities shall be non-recurring and necessary controls will be implemented to minimize impacts to water quality and water quality values.*
- 3. Tier 2 protection. Where the existing quality in a surface water is better than the applicable water quality standards to support the designated and existing beneficial uses, the better water quality shall be maintained and protected. Lowering of the existing quality in the surface water may be allowed, based on the following findings:*
 - a. The lower water quality allowed is necessary to accommodate economic or social benefit in the area where the surface water is located and no reasonable or economical alternatives to lowering the water quality are available,*
 - b. Water quality is not lowered below the applicable water quality standards to protect the designated and existing beneficial uses,*
 - c. The lower water quality allowed will not cause or contribute to exceedance of water quality standard that has been established for a downstream surface water,*
 - d. The highest statutory and regulatory permitting requirements for new and existing point sources are achieved, and*
 - e. All cost-effective and reasonable best management practices for nonpoint source pollution control are implemented to minimize impacts to water quality conditions.*

4. *Tier 1 protection. The level of water quality necessary to maintain and protect designated and existing beneficial uses shall be maintained and protected in all surface waters of the state.*
5. *Per NRS 445A.570, controls for diffuse sources may be prescribed by the Commission, if such controls are necessary to prevent lowering water quality levels of any high-quality water in waters of the state. Best management practices or other controls may be prescribed for diffuse sources, depending on the tier of protection. The Commission may allow diffuse sources to result in lowering of water quality for important economic or social benefits.*
6. *The antidegradation provisions of this section shall be implemented according to procedures contained in Nevada's Antidegradation Implementation Procedures, dated June 2020, and hereby adopted by reference.*