

PROPOSE REGULATION OF THE HEALTH DIVISION

**DRINKING WATER
STATE REVOLVING FUND
And
SET-ASIDE PROGRAMS**

Chapter 445A of Nevada Administrative Code is hereby amended by adding thereto the provisions set forth as Sections 1 to 133, inclusive, of this regulation.

Definitions

Section 1. Definitions. As used in Sections 57 to 133, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in Sections 2 to 56, inclusive, of these regulations, have the meanings ascribed to them in those sections.

Sec. 2. “Account for the revolving fund” has the meaning ascribed in NRS 445A.203.

Sec. 3. “Account for set-aside programs” has the meaning ascribed in NRS 445A.205.

Sec. 4. “Acute” means the effects of an exposure, which causes an immediate risk to human health and causes symptoms to occur quickly.

Sec. 5. “Administrator” has the meaning ascribed in NRS 445A.207.

Sec. 6. “Applicant” means a public water system that seeks financial loan assistance from the account for the revolving fund.

Sec. 7. “Best available technology” means the best technology, treatment techniques or other means that the EPA finds are available (taking cost into consideration), after an examination for the efficacy of the technology, technique or procedure is performed under conditions both in the laboratory and in the field.

Sec. 8. “Board” has the meaning ascribed in NRS 445A.210.

Sec. 9. “Board for financing water projects” has the meaning ascribed in NRS 349.936.

Sec. 10. “Capitalization grant” means the federal grant or grants defined in NRS 445A.225.

Sec. 11. “Capability” means:

1. The technical, managerial and financial capacity as used in 42 USC §300j-12 (**Section 1452 of the Safe Drinking Water Act**) and as described in this regulation; and
2. The ability to remain in compliance with Chapter 445A of the NRS and the NAC.

Sec. 12. “Categorical exclusion” means an exemption from the provisions of Sections 89 to 104, inclusive, of this regulation, that would otherwise apply, which is granted to an applicant for proposed activities of a water project that will not individually or cumulatively have a significant effect on the human environment, and for which no environmental assessment or environmental impact statement is required.

Sec. 13. “Chronic” means:

1. The effects of a short-term exposure that does not cause an immediate risk to human health, but which may result in adverse, long-term, health symptoms; or
2. The effects of a long-term exposure that may cause adverse health symptoms to develop over a long period of time.

Sec. 14. “Community water system” means a public water system which:

1. Serves at least 15 service connections used by year-round residents; or
2. Regularly serves at least 25 year-round residents.

Sec. 15. “Completion,” in the context of, and as applied to a particular phase of a water project, means the time when all of the requirements of that particular phase have been satisfied.

Sec. 16. “Completion of the water project” means the time when:

1. All of the requirements of the construction contracts which comprise the water project have been satisfied;
2. The water project has been placed in service; and
3. The final disbursement of loan funds, including release of retention funds, has been made to the recipient.

Sec. 17. “Construction” has the meaning ascribed in NRS 445A.215.

Sec. 18. “Department” has the meaning ascribed in NRS 439.005(2).

Sec. 19. “Distribution system” has the meaning ascribed in NAC 445A.65845.

Sec. 20. “Disadvantaged community” means an area served by a public water system in which the average income per household is less than 80% of the countywide average median household income.

Sec. 21. “Division” has the meaning ascribed in NRS 445A.220.

Sec. 22. “Domestic well” means a well that supplies water for “domestic use,” as that term is defined in NRS 534.013.

Sec. 23. “Emergency situation” is a situation which:

1. Could not have been prevented by the operator and results in an imminent threat to public health; or
2. Derives from the curtailment of a source of potable drinking water for an extended period of time.

Sec. 24. “Environmental assessment” means a document, which after review and consideration of an environmental information document, provides sufficient evidence and analysis to determine whether:

1. A finding of no significant impact is appropriate; or
2. An environmental impact statement is required.

Sec. 25. “Environmental impact statement” means a report that is done for a proposed water project which has a significant impact on the quality of the human environment or is environmentally controversial. The environmental impact statement is a detailed and formal evaluation of the favorable and adverse environmental and social impacts of the proposed water project and its alternatives. A tool for decision-making, the environmental impact statement describes the positive and negative effects of an undertaking and cites possible, less environmentally disruptive alternative actions.

Sec. 26. “Environmental information document” means a document or documents prepared by an applicant which contains sufficient information to enable the preparation of an environmental assessment.

Sec. 27. “EPA” means the United States Environmental Protection Agency.

Sec. 28. “Finding of no significant impact” means a final determination by the division, after the review of an environmental information document and an environmental assessment, that a water project which has not received a categorical exclusion, will not have a significant effect on the human environment and for which an environmental impact statement will not be required.

Sec. 29. “Initiation of operation” means the date specified by the recipient on which use of the water project begins for the purposes that it was planned, designed and constructed.

Sec. 30. “Intended use plan” means the plan or plans prepared by the division which describes how the State intends to use capitalization grant funds obtained from the federal government and matching funding from other sources for the year to meet the objectives of the Safe Drinking Water Act and further the goal of protecting public health.

Sec. 31. “Long-term loan” is a loan for which the repayment must not exceed 20 years or the life of the water project, whichever is less. Under special conditions for disadvantaged communities, the term of a long-term loan may be extended to 30 years.

Sec. 32. “Maintenance” means the preservation of the functional integrity and efficiency of the equipment and structures of a water project and includes preventive maintenance, corrective maintenance and replacement of such equipment or structures.

Sec. 33. “Median household income” means the most recent estimated average household income level:

1. As determined from U.S Census Bureau data; or
2. As documented by an applicant for the service area of the public water system.

Sec. 34. “Mitigation” includes:

1. Avoiding an environmental impact by not taking a certain action or parts of an action;
2. Minimizing an environmental impact by limiting the degree or magnitude of the action and its implementation;

3. Rectifying an environmental impact by repairing, rehabilitating or restoring the part of the environment affected;
4. Reducing or eliminating an environmental impact over time by preservation and maintenance during the life of the water project; or
5. Compensating for an environmental impact by replacing or providing substitute resources or environments.

Sec. 35. “Non-community water system” means a public water system that is not a community water system.

Sec. 36. “Non-transient, non-community water system” means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over at least six months per year.

Sec. 37. “Nonprofit entity” means a public water system, which is legally organized to return no profit to its owners or members and which has a federal tax exempt status identification number.

Sec. 38. “Operation” means the overall management and control of the individual processes and equipment which comprise a public water system. The term includes financial management, the management of personnel and records, laboratory control, process control, safety and planning for emergency operations, and regulatory compliance efforts.

Sec. 39. “Operation and maintenance” means those activities required to ensure the dependable and economical functioning of a water system.

Sec. 40. “Operator” has the meaning ascribed in NRS 445A.830.

Sec. 41. “Priority list” means the ordered listing, prepared at least annually, of potential water projects for which the division expects to provide to a public water system financial assistance from the account for the revolving fund.

Sec. 42. “Process of environmental review” means the development, review and evaluation of environmental information associated with a water project that enables the division, pursuant to Sections 82 to 104, inclusive, of this regulation to make a final determination for:

1. A categorical exclusion;
2. A finding of no significant impact; or
3. An environmental impact statement.

Sec. 43. “Professional engineer” has the meaning ascribed in NRS 625.060.

Sec. 44. “Public water system” has the meaning ascribed in NRS 445A.235.

Sec. 45. “Reasonable time” means the time determined by the division based on the particular situation.

Sec. 46. “Replacement” means obtaining and installing equipment, accessories or appurtenances necessary during the life of a water project to maintain the capacity and performance for which the water project has been designed and constructed. The term does not include major rehabilitation, repair or replacement of any capital or fixed assets of a water project.

Sec. 47. “Recipient” means an applicant who has executed a loan contract with the division to receive financial loan assistance from the account for the revolving fund.

Sec. 48. “Safe Drinking Water Act” has the meaning ascribed in NRS 445A.240.

Sec. 49. “Service connection” has the meaning ascribed in NAC 445A.66375.

Sec. 50. “Short-term loan” means a loan for which the repayment must not exceed 5 years.

Sec. 51. “Significant noncompliance”, for the purposes of Sections 1 to 133, inclusive, of this regulation, means that a public water system did not report results of monitoring for, took no samples for, or exceeded the maximum contaminant levels of, any of the primary drinking water standards set forth in NAC 445A.453 on two or more occasions during any 12 consecutive month period.

Sec. 52. “Small water system” has the meaning ascribed in NRS 445A.245.

Sec. 53. “State clearinghouse” means the state review process as established by the governor’s executive order of August 15, 1989.

Sec. 54. “Transient, non-community water system” means a non-community water system that does not regularly serve at least 25 of the same persons over six months per year.

Sec. 55. “User charge” means a charge levied on the users of a water project, or that portion of the ad valorem taxes paid by a user for his proportionate share of the cost of operation and maintenance, including replacement, of the water project.

Sec. 56. “Water project” has the meaning ascribed in NAC 445A.66585, except as that term may apply to projects for which the debt obligations of a public water system may be bought or refinanced as permitted under 42 USC 300j-12(f)(2).

General

Sec. 57. All water projects, which receive assistance from the account for the revolving fund under this chapter, shall comply with the following federal requirements, if applicable:

1. Archeological and Historic Preservation Act of 1974, PL 93-291;
2. Clean Air Act, 42 U.S.C. 7506(c);
3. Endangered Species Act, 16 U.S.C. 1531, et seq.;
4. Executive Order 11988, Floodplain Management;

5. Executive Order 11990, Protection of Wetlands;
6. Farmland Protection Policy Act, 7 U.S.C. 4201, et seq.;
7. Fish and Wildlife Coordination Act, PL 85-624, as amended;
8. National Historic Preservation Act of 1966, PL 89-665, as amended;
9. Safe Drinking Water Act, §1424(e), PL 92-523, as amended;
10. Wild and Scenic Rivers Act, PL 90-542, as amended;
11. Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended;
12. Section 306 of the Clean Air Act and §508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans;
13. Age Discrimination Act, PL 94-135;
14. Civil Rights Act of 1964, PL 88-352;
15. Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act;
16. Executive Order 11246, Equal Employment Opportunity;
17. Executive Orders 11625, 12138 and 12432, Women's and Minority Business Enterprise;
18. Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250);
19. Environmental Justice, Executive Order 12898;
20. Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646; and
21. Executive Order 12549, Debarment and Suspension.

Eligibility of Water Projects

Sec. 58. 1. Financial assistance from the account for the revolving fund in the form of a short-term or long-term loan may be provided for eligible water projects of public water systems.

2. A determination of water project eligibility to receive assistance from the account for the revolving fund must be made prior to the establishment of the priority list pursuant to Sections 65 to 69, inclusive, of this regulation.

3. Any design changes to a water project after the eligibility of a water project is determined, but before a commitment for a loan contract is made by the board for financing water projects:

- a. Must be reported to the division no later than 15 days after the design change is made; and
- b. May affect the eligibility of the water project to receive assistance.

<The division may find that the design changes are not eligible to be funded.

4. Public water systems eligible for assistance from the account for the revolving fund include those systems, which are:

- a. community water systems, either publicly or privately-owned, or
- b. non-community water systems which are:

- 1) nonprofit; and
- 2) transient or non-transient,

<other than those systems owned by the federal government.

5. Expenditures which are eligible for financial assistance include, but may not be limited to, water projects which:

- a. Facilitate compliance with health protection objectives of 42 USC §300j-12(a)(2) (**Safe Drinking Water Act, Section 1452(a)(2)**);
 - b. Facilitate compliance with NAC 445A.453 and 445A.455;
 - c. Replace aging infrastructure, if needed to maintain compliance or further the public health protection goals of the Safe Drinking Water Act;
 - d. Consolidate water supplies;
 - e. Facilitate the purchase of a portion of another system's capacity, if that is the most cost-effective solution.
6. An applicant may be eligible for financial assistance from the account for the revolving fund if the water project involves:
- a. The replacement, rehabilitation, or enhancement of an existing distribution system, or portions thereof, which is deemed necessary by the division for the integrity and performance of the public water system to meet the requirements of NAC 445A.450 to 445A.6731, inclusive; or
 - b. A new distribution facility in an existing public water system service area which has sufficient existing or planned capacity for the development and treatment of water and storage if the new distribution system is intended to primarily serve areas on domestic wells which are having public health or water quality problems. The applicant shall provide assurances that the existing population in the service area of the public water system, which is currently obtaining its water from domestic wells, will connect to the distribution system within a reasonable time after completion of the water project.

7. The eligible costs for a water project to be included in a construction contract to accomplish the objectives of subsections 5 and 6 of this section may include, but are not limited to:

- a. Costs for construction management and inspection;
- b. Costs of water project facilities;
- c. Costs of land and rights-of-way or easements integral to the water project;
- d. Costs of preparing any required environmental documents; and
- e. Costs for legal and financial services.

8. The division will determine which costs under subsection 7 of this section are deemed eligible on a case-by-case basis.

9. Refinancing of a water project is eligible if the debt obligation associated with the water project meets the requirements of 300j-12(f)(2) of the Safe Drinking Water Act.

Sec. 59.1. Financial assistance from the account for the revolving fund in the form of a short-term loan may be provided for costs related to the following activities:

- a. Planning and engineering to:
 - 1) Determine causes of public water system problems;
 - 2) Define alternative solutions; and
 - 3) Develop the information required in Section 76 of this regulation;
- a. Conducting preliminary or reconnaissance engineering;
- b. Preparing water project plans to meet the requirements of NAC 445A.450 to 445A.6731, inclusive;

- c. Preparing environmental information for the process of environmental review pursuant to Sections 82 through 104, inclusive, of this regulation;
 - d. Preparing the information required pursuant to Section 78 of this regulation; or
 - e. Any other water project-related planning activities approved by the division.
2. A short-term loan may be incorporated into a long-term loan.

Sec. 60. Costs associated with the following water projects are not eligible for financial assistance from the account for the revolving fund:

- 1. Dams, rehabilitations of dams;
- 2. The purchase of water rights, except if the water rights are owned by a public water system that is being purchased through consolidation as part of a capability development program;
- 3. Reservoirs, except for finished water reservoirs and those reservoirs that:
 - a. Are part of the treatment process and
 - b. Are located on the property where the treatment facility is located;
 - 1. Laboratory fees for monitoring;
 - 2. Operation and maintenance expenses;
 - 3. Projects needed mainly for fire protection;
 - 4. Projects for systems that lack adequate technical, managerial or financial capability, unless assistance will ensure compliance;
- 5. Projects for systems in significant noncompliance with NAC 445A.453, unless funding will facilitate compliance;
- 6. Projects primarily intended to serve future growth; and

7. Refinancing for private systems (42 USC 300j-12(f)(2)).

Sec. 61. 1. An applicant or a recipient who has reason to believe that an action taken by an employee of the health division pursuant to Sections 1 to 133, inclusive, of this regulation, is incorrect or based on inadequate knowledge may, within 10 business days after receiving notice of the action, request an informal discussion with the employee responsible for the action and the immediate supervisor of the employee.

2. If the informal discussion does not resolve the problem, the applicant or the recipient may, within 10 business days after the date scheduled for the informal discussion, submit a written request to the bureau for an informal conference. The informal conference must be scheduled for a date, place and time mutually agreed upon by the applicant or recipient, and the bureau, except that the informal conference must be held no later than 60 days after the date on which the bureau received the written request.

3. A determination of the bureau resulting from the informal conference cannot be appealed and is the final remedy available to the aggrieved applicant or recipient.

4. As used in this section, “bureau” means the bureau of health protection services of the health division of the department of human resources, or its successor.

Public Participation Process

Sec. 62. 1. The division shall provide for a public participation process as deemed necessary to afford interested or affected persons a reasonable opportunity to submit to the division orally or in writing data, views or arguments upon proposed water projects, or proposed actions or determinations of the division.

2. Unless a hearing is specified or required, a workshop or workshops will be used to meet the requirements of subsection 1 of this section.

2. The scheduling and notice of a workshop shall ensure that both written and oral comments can be submitted for timely consideration by the division.

3. Unless a longer period of time is required or specified for a workshop, the division shall provide notice of the time and place set for the workshop at least 15 days before the workshop. This notice may be provided:

a. By publishing a single notice in a newspaper or newspapers of general circulation in an area affected by the proposed action;

b. By mailing the notice to each interested person that requests to be on a mailing list maintained by the division;

c. By mailing the notice to appropriate federal and state agencies, municipalities; or

d. In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed division action.

2. The notice must include:

a. A description and location of the proposed water project, or proposed actions or determinations of the division;

b. Reasons for the division's preliminary determination;

c. The time period allowed for public comments; and

- d. The address where the written comments may be sent.
2. Due dates for written comments on the proposed action of the division will be clearly stated in the notices for the workshop.
3. In the notices and at the workshop, the division will clearly indicate what actions, if any, might result from its consideration of the information, comments, data and other material presented at the workshop.

Account for set-aside programs

Sec. 63. 1. At least annually, the division will propose funding from the EPA allotment of available SDWA funds for the various activities identified in the account for set-aside programs as authorized pursuant to NRS 445A.280 and as required by 42 U.S.C. Sections 300j-12(g)(2) and 300j-12(k).

2. In accordance with Section 62 of this regulation, the division will provide for a public participation process to:

- a. Review a draft of the intended use plan for the account for set-aside programs;
- b. Review proposals related to the account for set-aside programs; and
- c. Obtain comments and recommendations with regard to the use of funds allocated to the account for set-aside programs;

3. The division will finalize funding decisions with regard to the account for set-aside programs considering comments and recommendations made during the public participation

review process outlined in subsection 2 of this section and will prepare an intended use plan as required in Section 71 of this regulation for these activities.

1. The division will submit to EPA an application for the capitalization grant award to fund the account for set-aside programs by itself, or in consolidation with the application for the capitalization grant award to fund the account for the revolving fund.
2. The division will develop and submit to EPA a detailed work plan, if required, for each set-aside program.

Account for the revolving fund--Solicitation

Sec. 64. 1. At least annually, the division will solicit proposals in the form of a pre-application for water projects and requests for financial assistance from public water systems.

2. This solicitation will be used to:
 - a. Establish basic eligibility of the applicant and the applicant's water project; and
 - b. Determine the rank of the water project on the priority list to be submitted to the board of financing water projects.
1. If a proposed water project includes multiple phases, the applicant should file separate pre-applications, each of which describes the particular phase that can be constructed in a discrete increment.
2. The pre-application shall include:
 - a. The name, address and phone number of the applicant or a representative of the applicant;
 - b. A description of the proposed water project which indicates how specific public health concerns or problems are to be addressed by the proposed water project;

- c. A map showing the location of the service area for the public water system and the water project;
- d. The estimated total water project cost, prepared by a professional engineer;
- e. The estimated water project schedule;
- f. Evidence of readiness to proceed;
- g. The number of service connections served by the applicant's public water system;
- h. An estimate of population currently served by the applicant's public water system;
- i. Any other anticipated funding sources for the water project from other state or federal agencies, or other entities;
- j. The median household income and the source of that information for the community or area to be served, or for the county in which the water project is located;
- k. The anticipated impact of the water project costs to existing customer rates or user charges;
- l. The anticipated source of revenue to amortize the loan with a description of any authorization that may be required; and
- m. Any additional information necessary to establish the priority rank for water projects.

- 1. The pre-application is due 60 days from the date of the solicitation by the division.

Unsolicited proposals, except for those for emergency assistance submitted pursuant to Section 70 of this regulation, will be considered in the same time frame as solicited proposals.

- 2. The owner or an authorized representative of the owner, governing or managing body of the public water system must sign the pre-application.
- 3. These responses and proposals will be maintained at the division offices in public files.

4. The division will utilize the information to develop the priority list of water projects determined in accordance with Section 65 to 69, inclusive, of this regulation.

Division Development and Review of Priority List

Sec. 65. 1. On at least an annual basis, the division will develop a statewide priority list of water projects from the solicitation process described in Section 64 of this regulation. The list must be designed to achieve water quality and public health goals consistent with the requirements of the Safe Drinking Water Act.

2. Water projects that are on an existing priority list will be merged with new projects that are identified in subsequent solicitations.

1. Placement on the priority list does not guarantee that a water project will be funded. However, only those projects that are included on the priority list will be considered for possible funding.

2. The division may revise the ranking of a water project on an existing list at any time if:

- a. Subject to the approval required in NRS 445A.265(3)(b), information affecting the ranking of the project becomes available that was not available at the time the list was developed;

- b. It is necessary to bypass a water project subject to the provision of Section 71; or

- c. A water project to correct an emergency situation is proposed pursuant to Section 70.

Sec. 6666. 1. In establishing the priority list, the division will consider:

- a. The needs of the public water system;

- b. The priority of corrective actions deemed necessary by the division or by court order for the public water system to comply with state law or regulations;
 - c. The total amount of money available in the account for the revolving fund; and
 - d. Any other factors necessary to implement the provisions of Sections 67 to 69, inclusive, of this regulation.
2. The priority list must include:
- a. The name of the public water system;
 - b. The priority assigned to the proposed water project;
 - c. A description of the water project;
 - d. An estimate of the eligible cost of each proposed water project based on the best information available at the time the intended use plan is developed; and
 - e. The existing population of the public water system's service area at the time of application.

Priority system

Sec. 67. 1. The division will rank water projects using the following criteria:

- a. Small water systems will be identified for the purpose of meeting the loan assistance criteria of 42 USC 300j-12(a)(2);
- b. Each water project will be placed into one of the following four classes:
 - 1) Class I: Water projects in this class are intended to address problems including, but not limited to, 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. They will be prioritized according to the total score composed of points given for demonstrated or documented noncompliance with:

- A) 40 CFR 141.63, the Total Coliform Rule (4 points);
- B) 40 CFR 141.70 to 141.75, inclusive, the Surface Water Treatment Rule (3 points);
- C) 40 CFR 141.62(b)(7), b(8) and b(9), the Phase II (Nitrate/Nitrite) Rule-- (2 points);

2) Class II: Water projects in this class are intended to address chronic health concerns related to meeting the water quality requirements of NAC 445A.453 and 445A.455. They will be prioritized according to the total score composed of points given for:

- A) Demonstrated or documented noncompliance with the primary drinking water standards in the following order:
 - (1) 40 CFR 141.80 to 141.90, inclusive, the Lead and Copper Rule (15 points);
 - (2) 40 CFR 141.61(a), Volatile Organic Compounds (11 points);
 - (3) 40 CFR 141.61(c), Synthetic Organic Compounds (9 points);
 - (4) 40 CFR 141.62(b)(1-6), b(10-13) and b(15), Inorganic Compounds (7 points);
 - (5) 40 CFR 141.15, Radiological (5 points); or
- A) Exceeding any one of the Secondary Drinking Water Standards:
 - (1) NAC 445A.455 (1 point each);

1) Class III: Water projects in this class are intended to address deteriorated, substandard, or inadequate public water system conditions. They will be prioritized according to the total score composed of points given for each of the following types of water projects:

- A) Consolidation of water supplies or facilities (25 points) to:
 - (1) Eliminate water supplies that are contaminated;
 - (2) Eliminate facilities that do not meet state regulations; or
 - (3) Enable systems through a physical or management consolidation to comply with technical, managerial and financial capability criteria;
- A) 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);
- B) Rehabilitation, replacement or development of production facilities to replace contaminated sources (15 points);
- C) Installation or upgrading of storage facilities associated with finished water reservoirs and those reservoirs that are part of water treatment facilities and located on the property where the treatment facility is located, to prevent microbiological contaminants from entering the water system (10 points);
- D) Installation or replacement of transmission pipes to prevent contamination caused by leaks or breaks in the pipes, or improve water pressure to meet the requirements of NAC 445A.6672 (8 points);
- E) Installation or replacement of distribution pipes to prevent contamination caused by leaks or breaks in the pipes, or improve water pressure to meet the requirements of NAC 445A.6672 (6 points);

F) Installation of equipment, facilities or devices to prevent contamination by back-flow situations or cross connections and to meet the requirements of NAC 445A.67185 to 445A.67255, inclusive (4 points); and

G) Installation of metering, if the metering is intended to meet the requirements of water conservation plans developed to comply with NRS 540.121 to 540.151, inclusive and NRS 704.662 to 704.6624, inclusive, as those statutes are applicable (3 points).

4) Class IV: refinancing of existing debt incurred after July 1, 1993, pursuant to the restrictions of 42 USC 300j-12(f)(2).

2. A water project will be placed in the highest class related to the type of problem that the project is intended to address.

3. Within each class, the water projects will be ranked by type of public water system in the following order:

- a. community;
- b. non-transient, non-community, nonprofit; or
- c. transient, non-community, nonprofit.

2. Points assigned to address different problems within a single class of problems on a water system may be added together to determine the rank number of the water project; however, a water project cannot be moved from one class to another based on the ranking it receives from the total points within each class or combination of classes.

3. For priority lists determined prior to October 1, 1998, where two or more water projects within a class initially receive the same rank number as determined by the points assigned in subsections 1 and 4 of this section, each water project will then be ranked by:

- a. Household income with the water project assigned the lowest median household income given the highest ranking; then, if necessary,
 - b. By population served, with the higher population served given the higher ranking.
2. For priority lists determined after September 30, 1998, the product of the initial rank number of a water project within a class, and the ratio of the state-wide median household income to the median household income which is associated with the service area served by the public water system, is the rank number associated with the water project.
 3. Requests for financial assistance for emergency situations may be made to the division at any time subject to the procedures outlined in Sections 70 and 71 of this regulation.
 4. Requests for financial assistance as outlined in Section 59 of this regulation may also be provided for planning and engineering to determine causes of public water system problems and to define and implement solutions. These requests will be prioritized with other water projects in the priority list in the order appropriate to the problem that the water project associated with the request is intended to address.

Sec. 6868. 1. The priority of water projects determined by the division pursuant to Section 67 of this regulation is subject to the approval of the board for financing water projects pursuant to NRS 445A.265(3)(b).

2. Except as provided in Section 70 of this regulation, the division shall hold a public participation workshop process pursuant to Section 62 of this regulation to allow for a period of public review of, and comment on, its proposed priority list or revised priority list.

3. The division will consider comments and recommendations made in the public participation process in developing its final priority list or revised priority list to be presented to the board for financing water projects.

Sec. 69. 1. After it finalizes the priority list, and at least 15 days prior to a meeting of the board for financing water projects, the division shall:

- a. Submit the priority list to the board for financing water projects for approval pursuant to NRS 445A.265(3)(b); and
- b. Provide its proposed final priority list to all of those persons who submitted pre-applications to the division.

2. Any objection to the division's proposed ranking of water projects on a priority list should be filed with the division in writing no later than 7 days before the meeting of the board for financing water projects.

1. Objections to the division's proposed priority list which cannot be resolved by the division prior to the meeting of the board for financing water projects may be made orally at the meeting of the board for financing water projects.

Sec. 70. 1. In an emergency situation, an applicant requesting assistance from the account of the revolving fund may follow the application procedures outlined in Sections 78 to 81, inclusive, of this regulation without waiting for a revision to the priority list.

2. The division will provide notice by mail to all applicants on the approved priority list of an application filed pursuant to subsection 1 of this section and provide an opportunity for any

comments or objections to be filed with the division within 30 days of the date of the notice. Objections filed after this date will not be considered.

3. If there are objections that cannot be resolved by the division prior to proceeding with the application filed pursuant to subsection 1 of this section, the division may request that the matter be heard at the next meeting of the board for financing water projects for resolution. A minimum of 15 days notice of the matters to be considered by the board for financing water projects will be provided by the division to all of the public water systems that are represented on the priority list.

Sec. 71. 1. The division may by-pass a water project on the priority list if the applicant for the project:

- a. Withdraws the water project;
- b. Requests action to be deferred as allowed in subsection 2(b) of Section 75 of this regulation;
- c. Fails to file a letter of intent as required in Section 75 and 76 of this regulation; or
- d. The division determines that the water project is not ready to proceed.

2. Any action under subsection 1(d) of this section requires that the division provide 30 days notice to the applicant affected and an opportunity for that applicant to respond to the division within that 30-day time frame.

3. If the applicant files an objection in the response provided for in subsection 2 of this section which 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.

Sec. 72. The priority list approved by the board for financing water projects will be incorporated into the intended use plan developed pursuant to Section 73 of this regulation and submitted with other required information to the EPA in the application for the annual capitalization grant agreement or an amendment to a capitalization grant agreement for the account for the revolving fund.

Intended Use Plan

Sec. 73. An intended use plan shall be prepared by the division which describes how all moneys deposited into the account for the revolving fund and account for set-aside programs as authorized pursuant to NRS 445A.275 and 445A.280 ,and as required by 42 U.S.C. Sections 300j-12(g)(2) and 300j-12(k), will be used. Specifically, the intended use plan shall include descriptions of:

1. How all funds available to the account for the revolving fund and the account for set-aside programs will be used including funds from the following sources:
 - a. Capitalization grants; and
 - b. State match funds, including gifts, appropriations, contributions, grants and bequests of money from any public or private source;
2. How loan repayments are to be made;
 1. How interest earnings and bond proceeds are to be handled;
 2. The criteria and method used for the distribution of funds;
3. The financial status of the program;

4. The short-and long-term goals of the program;
5. The amounts of money transferred between the account for the revolving fund, and the Clean Water State Revolving Fund created pursuant to 33 USC Section 1251 et seq. and NRS 445A.060 et seq.;
6. The State disadvantaged community program and the funds utilized for this type of assistance;
7. The method employed by the division to rank water projects on the priority list;
8. Priority lists for:
 - a. Water projects that will receive funding in the first year after the grant award; and
 - b. Eligible water projects for funding in future years;
9. Procedures for altering the status of water projects on the priority list, including the addition of water projects addressing emergency situations; and
10. The process used to obtain public review and comment of the intended use plan as well as a summary of responses to substantial public comments received.

Sec. 74. 1. The division shall conduct a public participation process to obtain public comment and review in accordance with Section 62 of this regulation before finalizing its intended use plan.

2. Copies of the final intended use plan containing the information outlined in Section 73 of this regulation will be available in division offices throughout the state.

Application Requirements

Letter of Intent

Sec. 75. 1. Within 15 days after the priority list is approved by the board for financing water projects pursuant to Section 69 of this regulation, the division will notify each applicant of the priority list and the ranking of water projects.

2. Within 30 days after the notification letter is sent to each applicant pursuant to subsection 1, each applicant shall file with the division a letter of intent, indicating its intentions to either:

- a. Proceed with an application for financial assistance for proposed water projects, or
- b. Defer action on an application until a later time.

3. Failure to respond within 30 days to the notification letter may result in the by-pass of the applicant's water project for that year pursuant to the procedure outlined in Section 71 of this regulation. The applicant's water project will remain on the priority list for consideration in the following year.

Sec. 76. 1. The letter of intent must include:

- a. The name, address and telephone number of the applicant;
- b. The title or name, the location and a brief description of the proposed water project, including maps or preliminary plans;
- c. The number of residential service connections with population served and the number of nonresidential service connections served 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 151, inclusive, or NRS 704.662 to 704.6624, inclusive, 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 if the water project is eligible for a categorical exclusion;
- k. Any additional information required by the division; and
- l. A brief description of any material changes to the water project that were proposed in the pre-application submitted to the division pursuant to Section 64 of this regulation.

2. A letter of intent must be addressed to:

State Health Division
Bureau of Health Protection Services
Drinking Water State Revolving Fund
1179 Fairview Drive
Carson City, NV 89701-5405

3. An applicant shall provide the original and 2 copies of the letter of intent to the division.

4. The applicant's letter of intent to proceed with the proposed water project serves as a request to the division to:

- a. Schedule the pre-application conference pursuant to Section 77 of this regulation; and
- b. Initiate the process of environmental review pursuant to Sections 82 to 104, inclusive, of this regulation.

Pre-application conference

Sec. 77. 1. The division will schedule a pre-application conference within 45 days after the division receives the letter of intent from the applicant.

2. At a minimum, the owner or an authorized representative of the owner, governing or managing body of the applicant must attend the pre-application conference.
3. The primary purposes of the pre-application conference are to:
 - a. Acquaint the applicant with the general, legal and fiscal requirements of an application for funding;
 - b. Assist the applicant in:
 - 1) Determining the terms and conditions of the financial assistance, including the interest rate and the amortization schedule of the loan;
 - 2) Identifying other appropriate sources of financing for the applicant's water project, if applicable; and
 - 3) Developing the information necessary to complete an application; and
 - c. Establish the requirements for the process of environmental review pursuant to Sections 82 to 104, inclusive, of this regulation.

Application Process

Sec. 78. 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 pre-application conference is held.

2. An application for a short-term loan pursuant to Section 59 of this regulation shall include, at a minimum:

- a. Name, address and phone number of the applicant or the applicant's legal representative;
- b. A brief description of the proposed water project including its effects 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 as well as their environmental impact;
- f. Information necessary for the division to determine how the loan is to be paid back; and
- g. Any other information deemed necessary by the division.

3. An application for a long-term loan pursuant to Sections 58, of this regulation shall include, at a minimum;

- a. Name, address and phone number of the applicant or the applicant's legal representative;
- b. A brief description of the proposed water project including its anticipated effects on the public water system;
- c. Number of service connections and estimated population currently served by the applicant;
- d. Estimate 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 clearly show the location of the proposed water project with respect to other identifiable topographical or geographical features in the public water system's service area;
- f. A complete and legible legal description of the entire area of service for the water project improvement, including 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 can acquire all lands, other than public lands, interests therein and water rights necessary for the construction of the proposed water project. Copies of deeds to lands to be occupied, records of surveys, easements, agreements or permits to appropriate water granted pursuant to NRS Chapters 533 and 534 may be used as evidence of ownership;
- h. 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 540.131 to 151, inclusive, or NRS 704.662 to 704.6624, inclusive, 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. Itemized estimate of total water project cost, prepared by a professional engineer;
- l. Plans of the water project sufficient to:
 - 1) Meet the requirements of NAC 445A.450 to 445A.6731, inclusive; and
 - 2) Evaluate the engineering feasibility of the water project;
- a. 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;

- b. Preliminary water project schedule which provides a timetable for:
 - 1) Advertising and opening bids;
 - 2) Start of the construction phase;
 - 3) Estimated schedule of progress payments to contractor and other costs related to the draw-down of funds in the account for the revolving fund;
 - 4) Completion of the construction phase; and
 - 5) Initiation of operation of the water project;
- a. Description of how the costs for capital construction, operation and maintenance and costs for debt service to support the loan will be recovered including:
 - 1) Proposed revenue program that demonstrates the cost effect on users of the public water system, including 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) Results of bond elections;
 - 4) Contractual loan agreements; or
 - 5) Any other information necessary for the division to understand how the applicant intends to repay the loan;
- p. Estimated costs of future expansion and long-term needs for reconstruction of facilities following their design life;
- q. A summary of public participation in the development of the proposed water project;

- r. Institutional and management arrangements required for successful implementation of the water project;
 - s. A report on the status of the process of environmental review for the project;
 - t. A list of any required permits and a schedule of when those permits will be obtained;
 - u. Financial history, including annual financial statements for the preceding three years;
 - v. A list of previously approved loans to applicant within the past ten years, including the terms and conditions of payment, and a statement of the remaining balances of any outstanding loans;
 - w. At least three credit references;
 - x. Copies of current capital improvement plans and debt management policies as provided to the Department of Taxation pursuant to Chapter 350 of NRS and associated regulations, if applicable;
 - y. Security for the loan, if applicable; and
 - z. Evidence that the public water system has the technical, financial, and managerial capability to comply with the Safe Drinking Water Act and NAC 445A.405 to 445A.6731, inclusive.
4. In order to ensure a complete application, the applicant shall submit any other information deemed necessary by the division.
5. The information required by subsection 3(m) of this section must include:
- a. A description of the relationship between the alternatives listed and the needs to be served, including future growth expected after the water project becomes operational;

- b. An evaluation of improved public water system performance attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to the construction of new facilities;
 - c. An evaluation of opportunities to reduce the use of energy or to recover energy; and
 - d. Information concerning total capital costs and annual operation and maintenance costs, as well as estimated annual or monthly costs to residential, commercial and industrial users for a planning period of 20 years.
6. The monetary costs to be considered in the analysis done pursuant to subsection 3(m) of this section must include the present worth or equivalent annual value of all capital, operation and maintenance costs.
7. The forecasts of population contained in the analysis done pursuant to subsection 3(m) of this section must be consistent with those prepared by the state demographer.

Sec. 79. 1. Upon receipt of an application, the division shall evaluate:

- a. The application to determine whether the applicant submitted all of the information required in Section 78 of this regulation;
- b. The ability of the public water system to provide for:
 - 1) The continuing replacement of components of the public water system that are functionally obsolete or worn out;
 - 1) Current and anticipated debt service; and
 - 2) Current and future expenses of operation and maintenance;

- a. The technical, financial, and managerial capability of the public water system to remain in compliance with the Safe Drinking Water Act and NAC 445A.450 to 445A.6731, inclusive;
 - b. Whether adequate collateral, if required, has been provided by the applicant to secure the loan; and
 - c. The sources of repayment identified by the applicant to ensure that they are of sufficient amount and certainty to fully repay the loan and provide for the upkeep of the public drinking water system; and
 - d. Whether the water project is consistent with any comprehensive planning and zoning provisions which may be established for the area including management plans, development plans and county planning activities.
2. If the applicant is a utility under the jurisdiction of the public utilities commission, an order by the public utilities commission authorizing a surcharge under NAC 704.600 for the water project will be sufficient to satisfy the requirements of subsection 1 of this section.

Sec. 80. 1. An application is considered complete when the division determines that the applicant has supplied all of the information required in Section 76 of this regulation.

2. Except as otherwise provided in subsections 3 and 4, an application shall not be considered complete by the division until:

a. Copies of any permits necessary for compliance with requirements for planning and zoning, including necessary variances or special use permits, are received by the division;

or

- b. Any agency issuing such permits has given written authorization to proceed with the proposed water project and the division has received a copy of the authorization.
2. The division may waive the requirements of subsection 2 if it has received information from a reliable source that the proposed water project will receive or has received all permits required by any governmental agency.
4. The division may, before it receives any permit required pursuant to subsection 2 of this section which requires the submission of a detailed engineering design, recommend approval of an application if there are no foreseeable conditions threatening the feasibility of the proposed water project.
5. If an applicant submits an incomplete application, the division shall request that the applicant provide the required missing data or information. If the applicant does not respond to the request, the division shall notify the applicant in writing of specific deficiencies in the application. The applicant has 60 days from the date of mailing of the written notice of deficiencies to complete the application by supplying the requested information or documentation. If the application is not completed and the requested information is not received by the end of that period, the application shall be rejected. The applicant may re-apply pursuant to the requirements set forth in these regulations.

Sec. 81. If a water project will serve two or more public water systems, the applicant shall submit with its application the executed interagency agreement, contract or other legally binding instrument necessary for the financing, constructing and operation of the proposed water project. This instrument must set forth the basis upon which costs are allocated, the

formula by which costs are allocated and the manner in which the system of allocating costs will be administered.

Process of environmental review

- Sec. 82.** 1. The division will initiate the process of environmental review when the applicant files a letter of intent pursuant to Sections 75 and 76 of this regulation.
2. The process of environmental review must be integrated with the preparation of the application to identify environmental impacts, avoid delays and resolve conflicts.
3. An applicant shall consult with the division during the formulation of the water project or the preparation of the water project plan to:
- a. Determine alternatives to the water project which must be evaluated; and
 - b. Identify potential environmental issues.
2. If, at any point during or after the process of environmental review, but before a loan contract is executed, the division determines that the water project or environmental conditions have changed significantly from those which underwent previous review, the ability of the water project to qualify for, and receive, a loan may be delayed until the division is able to complete the process of environmental review with the new information.
3. If, after a loan contract is executed, the division determines that the water project or environmental conditions have changed significantly from those which underwent the process of environmental review, the water project may be delayed until the impact of the changes on the process of environmental review can be determined.

Categorical Exclusion

Sec. 83. 1. The division will review a request by an applicant for a categorical exclusion based on, but not limited to, the environmental information provided by the applicant pursuant to subsection 1(e) of Section 76 of this regulation to determine whether:

- a. The water project is eligible for a categorical exclusion, or
 - b. Further review of environmental information is necessary by requiring the applicant to file an environmental information document pursuant to Section 89 of this regulation.
2. If the water project is determined by the division to be eligible for a categorical exclusion pursuant to Section 85 of this regulation, the division will issue its preliminary determination pursuant to Section 86 of this regulation.

Sec. 84. For public water systems subject to the provisions of NRS 704.820 to 704.900, inclusive, a permit for construction issued by the public utilities commission pursuant to NRS 704.890 shall fulfill the environmental review requirements of Sections 82 to 104, inclusive, of this regulation. An applicant shall include such a determination with its application.

Sec. 85. 1. The division shall review the applicant's information at the time of the pre-application conference held pursuant to Section 77 of this regulation and determine whether a water project is eligible for a categorical exclusion.

2. The following water projects may be eligible for a categorical exclusion:

a. The rehabilitation of existing facilities or replacement of equipment, including but not limited to:

- 1) Replacement of existing mechanical equipment or structures; or
- 2) Construction of small structures on existing sites;

- b. Minor upgrading or minor expansion of existing capacity for:
 - 1) The development and treatment of water; or
 - 2) The distribution system;
 - c. A water project for which there is sufficient evidence that a significant effect on the quality of the environment is unlikely.
3. The following types of water projects are ineligible for a categorical exclusion:
- a. The facilities to be provided create a new source of water supply;
 - b. The facilities result in substantial increases in the capacity for:
 - 1) The development and treatment of water; or
 - 2) Substantial increases in the capacity of the distribution system;
 - c. The water project is known or expected to have a significant effect on the quality of the human environment, whether individually, cumulatively over time, or in conjunction with other federal, state, local or private actions;
 - d. The water project is known or expected to affect directly or indirectly recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones, scenic areas or other resource areas; or
 - a. The action is known or expected to cause significant public controversy or not to be cost-effective.
4. For the purposes of this section, the term “capacity” means the physical or volumetric ability of the water system to deliver water to consumers.

Sec. 86. 1. If it determines that a water project is eligible for a categorical exclusion pursuant to Section 85 of this regulation, the division will provide notice of its intention to grant the categorical exclusion. The notice must be:

- a. published at least once in a newspaper of general circulation throughout the area affected;
- b. provided to persons potentially affected by the water project including 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.

2. The notice must include:

- a. A description and location of the proposed water project, or proposed actions or determinations of the division;
- b. Reasons for the division's preliminary determination of eligibility for categorical exclusion;
- c. The time period allowed for public comments; and
- d. The address where the written comments may be sent.

2. Comments must be received by the division within 30 days of the public notice or submission to the state clearinghouse.

Sec. 87. 1. The division shall grant a categorical exclusion to an applicant if no significant comment is received from the notification process followed in Section 86 of this regulation and if the water project is otherwise eligible.

2. If issues or objections raised from the notification process held pursuant to Section 86 of this regulation are resolved, the division may issue its final determination to grant the categorical exclusion.

3. The division shall review any comments received pursuant to Section 86 of this regulation and respond to any comments which it deems significant prior to:

a. Making its final determination whether to grant the categorical exclusion; or

b. Reaffirming a previous categorical exclusion pursuant to Section 88 of this regulation.

2. After the division issues its final determination, no further action is required by the division or the applicant as to the process of environmental review.

3. If issues are not resolved, and the division determines that a water project is ineligible for a categorical exclusion, then the applicant must prepare an environmental information document pursuant to Section 89 of this regulation.

Sec. 88. 1. In any case in which the final determination for a categorical exclusion is 5 or more years old, the division shall reevaluate the water project, current environmental conditions and public views, and compare them with the information on which the original categorical exclusion was based.

2. If the division finds, as a result of its review pursuant to subsection 1 of this section, that no significant changes have occurred since the original final determination was made, the division shall, before recommending approval of the water project to the board for financing water projects, issue a notice of its intention not to change the original final determination pursuant to the procedures outlined in Sections 86 and 87 of this regulation.

3. If the division finds, as a result of its review pursuant to subsection 1, that additional information is necessary and requires the applicant to file an environmental information document, the process of environmental review for the water project shall follow the procedures outlined in Sections 89 to 104 of this regulation.

Environmental Review--Environmental Information Document

Sec. 89. 1. If the division determines that a water project is ineligible for a categorical exclusion, the applicant shall prepare an environmental information document for the water project. The environmental information document must be included with, or amended to, the application and may reference material filed in the application.

2. At a minimum, the contents of an environmental information document must include:
 - a. The purpose and need for the water project;
 - b. The environmental setting of the proposed water project and the future of the environment without the water project;
 - c. The alternatives to the water project as proposed and their potential environmental impacts;
 - d. A description of the proposed water project;
 - e. The potential environmental impacts of the water project as proposed including those which cannot be avoided;
 - f. The relationship between the short-term uses of the environment and the maintenance and enhancement of long term productivity;
 - g. Any irreversible and irretrievable commitments of resources to the proposed water project;
 - h. Documentation of any activities, meetings or coordination pursued with the public and appropriate governmental agencies that were utilized to identify and discuss issues associated with the proposed water project and allow public and agency review of the water project; and

i. A summary of issues raised, and changes to the water project which may be made as a result of the activities, meetings or coordination documented or described in subsection h of this section, above.

3. The environmental information document must address all significant environmental effects of the proposed water project and the implications of the water project. These effects include the primary impacts of construction, secondary or indirect impacts, and cumulative impacts of water projects in light of similar or related actions that have been taken, regardless of who has taken them. These include, but are not limited to, impacts with respect to:

- a. Threatened or endangered species;
- b. Wetlands;
- c. Environmentally significant agricultural land;
- d. Fish and wildlife;
- e. Cultural resources;
- f. Open spaces;
- g. Environmentally sensitive areas;
- h. Air quality

1) For water projects to be funded under the account for the revolving fund, the population to be served during the useful life of the water project must conform to any State Implementation Plan or Air Quality Management District Plan approved or promulgated under Section 110 of the Clean Air Act;

- a. Ground water and surface water quality and quantity;
- b. Land-use plans;
- c. Energy use;

- d. Long-term versus short-term trade-offs;
- e. Accommodation of water project to future population growth;
- f. Floodplains; and
- g. Area-wide planning.

Environmental Assessment

Sec. 90.1. The division shall review the environmental information document and other material submitted by the applicant and have the applicant prepare a draft environmental assessment of the water project in sufficient detail to serve as an independent environmental review. The draft environmental assessment may incorporate by reference the environmental information document.

- 2. The division may require the applicant to submit supplementary information in order to complete the draft environmental assessment.
- 3. The draft environmental assessment shall include:
 - a. Identification of potentially significant environmental concerns and all potential impacts;
 - b. An analysis of the existing environmental conditions relevant to the analysis of alternatives or to determining the environmental impacts of the proposed action;
 - c. The relevant future environmental conditions if the water project is not constructed;
 - d. The purpose and need for the facility which must include a summary discussion and demonstration of the need for the water project, with particular emphasis on existing public health or water quality problems and their severity and extent;

- e. A comparative analysis of feasible alternatives, including the “no action” alternative if the water project is not constructed. These alternatives must be reviewed with respect to:
 - 1) Capital and operating costs;
 - 2) Direct, indirect and cumulative environmental effects;
 - 3) Physical, legal or institutional constraints; and
 - 4) Compliance with regulatory requirements;
 - f. The environmental consequences of long-term, irreversible and induced environmental impacts;
 - g. The reasons for rejecting any alternative including any significant environmental benefits precluded by rejection of an alternative;
 - h. A full range of relevant environmental impacts of the proposed action including measures to mitigate adverse impacts and any irreversible or irretrievable commitments of resources to the water project;
 - i. Any specific requirements, including conditions of financial assistance and the requirements of area-wide planning;
 - j. Sources of information used to describe the existing environment and to assess future environmental impacts. These sources must include regional, state and federal agencies with responsibility or interest in the area and actions described in the application; and
 - k. Any other information or documentation requested by the division.
4. The division shall make the draft environmental assessment available for review and comment by the public in a public participation process pursuant to Section 62 of this regulation. The notice period for such review and comment is 30 days instead of the 15 days specified in subsection 4 of Section 62 of this regulation.

5. After considering comments offered in the public participation process, the division will issue:

- a. A preliminary finding of no significant impact pursuant to Section 91 of this regulation; or
- b. A notice of intent to prepare an environmental impact statement pursuant to Sections 95 to 104, inclusive, of this regulation. The division and the applicant may consider partitioning a project for environmental review pursuant to Section 95 of this regulation.

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Sec. 91. 1. If, after completion of the environmental assessment of the water project, the division preliminarily determines that an environmental impact statement will not be required, the division shall provide notice of its intention to issue a finding of no significant impact. A finding of no significant impact must list mitigation measures, if any, necessary to make the recommended alternative environmentally acceptable.

2. The notice issued pursuant to subsection 1 of this section must be:

- a. published at least once in a newspaper of general circulation throughout the area affected;
- b. provided to persons potentially affected by the water project including 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 actions or determinations of the division;
 - b. Reasons for the division's preliminary determination of eligibility for categorical exclusion;
 - c. The time period allowed for public comments; and
 - d. The address where the written comments may be sent.
4. Any comments must be received by the division within 30 days of the public notice or submission to the state clearinghouse.

Sec. 92. 1. The division shall issue a finding of no significant impact to an applicant if no significant comment is received from the notification process followed in Section 91 of this regulation and if the water project is otherwise eligible.

2. The division shall review any comments received pursuant to Section 91 of this regulation and respond to any comments which it deems significant prior to completing the process of environmental review and making its final determination whether to issue a finding of no significant impact.

3. If issues or objections raised from the notification process held pursuant to Section 91 of this regulation are resolved, the division may issue the finding of no significant impact.

4. After the division issues a finding of no significant impact, no further action is required by the division or the applicant.

5. If issues are not resolved, and the division decides that a water project is ineligible for a finding of no significant impact, then the applicant must meet the requirements of Sections 95 through 104, inclusive, of this regulation. The division and the applicant may consider partitioning a project for environmental review pursuant to Section 95 of this regulation.

Sec. 93. 1. In any case in which the final determination for a finding of no significant impact is 5 or more years old, the division shall reevaluate the water project, current environmental conditions and public views, compare them with the information on which the original finding of no significant impact was based.

2. If the division finds, as a result of its review pursuant to subsection 1, that no significant changes have occurred since the original final determination was made, the division shall, before recommending approval of the water project to the board for financing water projects, issue a notice of its intention not to change the original final determination to issue a finding of no significant impact pursuant to the procedures outlined in Sections 91 and 92 of this regulation.

3. If the division finds, as a result of its review in subsection 1, that additional information is necessary to supplement the original environmental information document, the process of environmental review for the water project shall follow the procedures outlined in Sections 95 to 104 of this regulation.

Sec. 94. 1. After a finding of no significant impact is issued pursuant to Section 92, a loan contract may be executed.

2. The division shall ensure that any mitigation measures identified in a final determination by the division to issue a finding of no significant impact will be implemented by the applicant. This must be done by conditioning the agreement for financial assistance upon compliance with all agreed-upon mitigation measures.

Partitioning

Sec. 95. 1. Under certain circumstances, the construction of a portion of a water project may be justified in advance of completing all requirements of process of environmental review for the remainder of the water project. If there are overriding considerations of cost or impaired program effectiveness, the division may recommend a loan contract be executed for a discrete component of a complete water project.

2. The process of partitioning the environmental review for a discrete component of a complete water project must comply with the criteria and procedures described in subsection 3 of this section. It may only be done if an environmental impact statement is required pursuant to a determination that a finding of no significant impact cannot be issued. In addition, all reasonable alternatives for the complete water project of which the discrete component is part must have been previously identified, and each part of the environmental review for the remainder of the overall water project plan must comply with all the requirements of Sections 89 to 104, inclusive, of this regulation.

3. To satisfy the criteria for partitioning, a discrete component of a complete water project must:

- a. Immediately remedy an acute or severe public health or water quality problem;
- b. Not foreclose any reasonable alternatives identified for the complete water project;
- c. Not cause significant, adverse, direct or indirect environmental impacts, including those which cannot be acceptably mitigated without finishing the complete water project of which the discrete component is a part; and
- d. Not be highly controversial.

4. A request for partitioning must contain:
 - a. A description of the discrete component proposed for construction which the applicant wants to complete before the process of environmental review of the entire water project plan is completed;
 - b. A description of the manner in which the discrete component meets the criteria described in subsection 3 of this section;
 - c. The environmental information required by Section 90 of this regulation which is pertinent to the discrete component; and
 - d. Any preliminary information that may be important in an environmental impact statement determination for the entire water project plan.
5. The division shall:
 - a. Review the request for partitioning to determine whether it complies with the requirements of this section; and
 - b. If partitioning is appropriate, prepare and issue a finding of no significant impact for the discrete component proposed for construction following the procedure outlined in Sections 91 and 92 of this regulation.

Environmental Impact Statement

Sec. 96. The division will require an environmental impact statement whenever the division determines that a water project is ineligible for either a categorical exclusion or a finding of no significant impact, and that the water project is known or expected:

1. To have a significant effect on the quality of the human environment, either individually, cumulatively over time or in conjunction with other federal, state, local or private actions; or
2. To affect, directly or indirectly, recognized cultural resources, habitats of endangered or threatened species, environmentally important natural resource areas such as floodplains, wetlands, environmentally significant agricultural land, aquifer recharge zones, scenic areas or other resource areas.

Sec. 9797. 1. Upon making a determination that an environmental impact statement is required in connection with a proposed water project, the division shall provide a notice of its intent to make the applicant prepare an environmental impact statement.

2. The notice issued pursuant to subsection 1 of this section must be:
 - a. published at least once in a newspaper of general circulation throughout the area affected;
 - b. provided to persons potentially affected by the water project including adjacent landowners;
 - c. mailed by the division to each person included on a mailing list maintained by the division for the water project;
 - d. provided to appropriate federal agencies; and
 - e. submitted to the state clearinghouse for review by other federal and state agencies.
3. The notice issued pursuant to subsection 1 of this section must include:
 - a. A description and location of the proposed water project;
 - b. The reasons for the requirement to file an environmental impact statement; and
 - c. The address of the applicant where interested persons can file comments or inquire as to scheduled meetings to discuss the alternatives developed for the water project.

4. As soon as possible after the distribution of the notice issued pursuant to subsection 1, the applicant shall convene a meeting of affected federal, state and local agencies, affected Indian tribes, the division and other interested parties to determine the scope of the environmental impact statement. As part of this meeting, the applicant shall:

a. Determine the significant issues to be analyzed in depth in the environmental impact statement;

b. Identify the preliminary range of alternatives to be considered;

c. Identify potential cooperating agencies and determine the information or analyses that may be needed from those agencies or other parties; and

d. Discuss the method for preparing the environmental impact statement and the strategy for securing public participation.

5. Immediately following the meeting required by subsection 4 of this section, the applicant shall identify and evaluate all potentially viable alternatives to address adequately the range of issues identified at the meeting. Additional issues may be addressed or others eliminated during this process and the reasons for doing so may be documented as part of the environmental impact statement.

6. Except as otherwise provided in subsection 7 of this section, the applicant shall prepare or have prepared, a draft environmental impact statement for the water project. The applicant shall pay the costs incurred in preparing the draft environmental impact statement.

7. If a federal agency is required to prepare an environmental impact statement, the division and the applicant need not participate in the cost of the environmental impact statement, but shall cooperate in the preparation of the environmental impact statement.

Sec. 98. 1. Public workshops shall be scheduled by the division and held in accordance with Section 62 of this regulation, except that the notice shall be 30 days. The division shall schedule not less than two public workshops. A public workshop shall be held after alternatives have been developed. A public workshop shall be held before a draft of the environmental impact statement is done

2. The division may institute such additional procedures for securing public review and participation as are deemed necessary during the process of environmental review. At a minimum, the procedures shall meet the requirements of Section 62 of this regulation.

Sec. 99. 1. The applicant shall:

- a. Provide 5 copies of the draft environmental impact statement to the division;
- b. Provide copies of the draft environmental impact statement to all local, state and federal agencies and public organizations having an interest in the proposed water project; and
- c. Make copies of the draft environmental impact statement for the public to review.

2. Upon receipt of the draft environmental impact statement for the water project, the division shall provide notice of the availability of the draft environmental impact statement for review.

2. The notice issued pursuant to subsection 2 of this section must be:

- a. published at least once in a newspaper of general circulation throughout the area affected;
- b. provided to persons potentially affected by the water project including adjacent landowners;
- c. mailed by the division to each person included on a mailing list maintained by the division for the water project;
- d. provided to appropriate federal agencies; and

- e. submitted to the state clearinghouse for review by other federal and state agencies.
- 4. The notice must include:
 - a. A description and location of the proposed water project;
 - b. The availability of the draft and where the draft environmental impact statement can be reviewed;
 - c. The time period allowed for public comments on the draft environmental impact statement; and
 - d. The address where the written comments may be sent.
- 5. Any comments must be received by the division within 30 days of the public notice or submission to the state clearinghouse.

Sec. 100. 1. If no significant comments are received as a result of the notification process in Section 99 of this regulation, the division may issue its final determination that the process of environmental review is complete.

- 2. The division shall:
 - a. Review any comments received;
 - b. Respond to any comments, which it deems significant; and
 - c. Provide the responses to comments to the applicant for incorporation into the final environmental impact statement.

Sec. 101. Upon a request to the division, members of the public may be charged a reasonable fee for a copy of any draft or final environmental impact statement or any supporting documents.

Sec. 102. The applicant shall prepare or have prepared a final environmental impact statement at the conclusion of the public comment period and public workshops and after consideration of comments received during the public participation process. The final environmental impact statement must consist of:

1. The draft environmental impact statement;
2. Copies of all written comments received or summaries of all oral comments made concerning the draft environmental impact statement;
3. The names and addresses of all persons who commented on the draft environmental impact statement;
4. Copies of the responses made to comments developed pursuant to subsection 2 of Section 100; and
5. Any other information deemed appropriate by the division.

Sec. 103. 1. After an applicant submits the final environmental impact statement to the division, the division shall, in order to complete the process of environmental review:

- a. Review the final environmental impact statement; and
 - b. Issue a final determination that identifies any mitigation measures which the applicant must implement.
2. Before the division can recommend an application for approval to the board for financing water projects, the applicant must provide assurance that it will implement any mitigation measures identified in the final determination.

3. The division shall condition the loan contract upon compliance by the applicant with the mitigation measures identified in the final determination of the division.
4. After the final determination of the division has been issued and the water project has received approval from the board for financing water projects, a loan contract may be executed.
5. Any changes in design or environmental conditions that were not considered in the process of environmental review are subject to the provisions of Subsections 4 or 5 of Section 82.

Sec. 104. 1. In any case in which the final determination on a final environmental impact statement is 5 or more years old, the division shall reevaluate the water project, current environmental conditions and public views, compare them with the information on which the final determination was based.

2. If the division finds, as result of its review pursuant to subsection 1, that no significant changes have occurred since the original final determination was made, the division shall, before recommending approval of the water project to the board for financing water projects, issue a notice of its intention not to change the original final determination pursuant to the procedures outlined in subsection 2 of this section.

3. The notice issued pursuant to subsection 2 of this section must be:

- a. published at least once in a newspaper of general circulation throughout the area affected;
- b. provided to persons potentially affected by the water project including adjacent landowners;
- c. mailed by the division to each person included on a mailing list maintained by the division for the water project;

- d. provided to appropriate federal agencies; and
 - e. submitted to the state clearinghouse for review by other federal and state agencies.
4. The notice issued pursuant to subsection 2 of this section must include:
- a. A description and location of the proposed water project;
 - b. The availability of the original environmental impact statement, the material on which the division's notice of intention relies, and the address where the information can be reviewed;
 - c. The time period allowed for public comments on the notice of intent; and
 - d. The address where the written comments may be sent.
5. Any comments must be received by the division within 30 days of the public notice or submission to the state clearinghouse.
6. If no significant comments are received as a result of the notification process in subsection 2 of this section, the division may issue its final determination that the process of environmental review is complete.
7. If the division finds, as a result of its review in subsection 1 of this section, or as a result of information received in subsection 5 of this section, that additional information is necessary to supplement the original environmental information document, the process of environmental review for the water project shall follow the procedures outlined in Sections 94 to 104 of this regulation.

Approval of Application by Division

Sec. 105. The division will reject an application if the applicant fails to:

1. Submit a complete application pursuant to Sections 78 and 79 of this regulation;
2. Develop, document or obtain approval for authorization of dedicated sources of revenue sufficient in the judgment of the division to ensure repayment of the loan;
3. Provide adequate collateral for the loan;
4. Demonstrate the legal, technical, managerial, institutional and financial capability to provide for adequate operational, maintenance, and replacement cost of the system for the term of the loan;
5. Demonstrate the required technical, financial and managerial capability to continue to comply with the Safe Drinking Water Act and NAC 445A.450 to 445A.6731, inclusive; and
6. Implement mitigation measures identified in a final determination of the division in the process of environmental review.

Approval of Application

Financial; Award of Contract

Sec. 106. Upon determining that an application is complete, the division will prepare a written report, which includes:

1. An evaluation of the application;
2. The financial feasibility of the proposed water project;
3. The status of funding available in the account for the revolving fund;
4. A review and analysis of the creditworthiness of the applicant;
5. An analysis of the risk level of the loan;

6. An opinion of the technical, and managerial and financial capacity of the applicant;
7. An evaluation of the public water system's capability to remain in compliance with the Safe Drinking Water Act and Chapters 445A of the NRS and NAC; and
8. Any other information as deemed necessary by the division.

Sec. 107. 1. The division shall review the completed application and any records and 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 and is economically justified and 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.
2. The division shall submit the report required in Section 107 of this regulation to the board for financing water projects with one of the following recommendations:
- 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 a commitment of funds requested by the applicant.

Sec. 108. 1. The division shall notify the applicant and the administrator in writing no later than 15 days after it receives notice of the action taken by the board for financing water projects pursuant to the recommendations of the division in subsection 2 of Section 107. This notice shall include a copy of the action taken by the board for financing water projects.

2. The administrator may, within 15 days of his receipt of the approval by the board for financing projects, request, in writing, that the state treasurer issue securities in an amount sufficient to provide the necessary state match to the account for the revolving fund for the commitment of funds to the loan application. In this written request, the administrator shall provide a schedule depicting when the funds will be needed.

3. The administrator may enter into a loan contract with the applicant for the commitment of funds pursuant to Section 111 of this regulation only if the state treasurer agrees with the written request mentioned in subsection 2 of this section.

Sec. 109. 1. Upon receipt of the notice of approval by the board for financing water projects, an applicant shall submit to the division a final set of plans, and specifications before advertising for bids. 2. The division shall examine the plans and specifications for a water project to determine whether:

a. The design is consistent with the facilities described in subsection 3(k) of Section 78 of this regulation;

b. The water project will meet the standards specified in NAC 445A.453 and 445A.455; and

c. The water project will comply with applicable federal and state requirements.

Sec. 110. 1. The division shall not offer a loan contract to an applicant unless:

- a. The board for financing water projects has issued its approval of the water project to the applicant; and
 - b. The applicant has submitted to the division a definite water project schedule which includes
 - 1) A reasonable time frame from bidding through completion of the water project; and
 - 2) A schedule of when funds are expected to be drawn from the account for the revolving fund.
2. Upon receipt of the approval by the board for financing water projects pursuant to Section 107 of this regulation and subject to the provision of subsection 3 of Section 108 of this regulation, the division shall prepare and transmit to the applicant a loan contract. This contract, provided for in Section 111 of this regulation, must be fully executed by all parties prior to the start of construction of the water project.

Sec. 111. The applicant and the administrator may when all conditions for a commitment of financial assistance have been met, execute a loan contract on a form provided by the division.

Sec. 112. 1. Before the recipient begins construction of the water project, he shall submit to the division:

- a. Bidding schedules and information suitable for determining progress of the water project and estimated payment schedules;
- b. Proof of the receipt of all necessary permits required to construct the water project;
- c. Documentation that any procedures for purchasing and contracting required by the state or federal government will followed;
- d. The agendas for any conferences held by the recipient before bidding and construction;

- e. Schedules for procurement of material and for contract or construction services; and
 - f. Any other documents that the division deems necessary.
2. The division shall be given at least five days notice of the date, time and location of any conferences scheduled pursuant to subsection 1(d) of this section.
 3. The recipient shall not commence construction of the water project until he receives a notice to proceed with the water project from the division. This notice may be issued by the division upon satisfactory receipt of the items identified in subsection 1 of this section.

Sec. 113. During the construction of the water project, the recipient shall provide to the division:

1. Such documents as the division deems necessary to determine compliance with the loan contract;
2. Monthly reports regarding the progress of the construction of the water project, each of which must:
 - a. Include a current budget for the completion of the water project which accurately reflects:
 - 1) Any costs incurred up to the date of the report;
 - 2) The anticipated costs to complete the water project;
 - 3) The status of available funding; and
 - A) Identify any major change to project schedules and describe any reasons for the change; and
 - B) Be accompanied by copies of any change orders affecting the scope or cost of any components of the water project.

Sec. 114114.1. The recipient may submit periodic requests for the disbursement of money on forms provided by the division.

2. The recipient shall provide the division with:

a. Copies of all contracts related to the water project, including contracts for construction, procurement and the provision of professional services. Any invoice submitted by the recipient of the loan for the payment of reimbursable costs must include references to the authorizing contracts and, if such a contract is divided into separate tasks, references to those tasks;

b. Proof that any prior disbursements of money pursuant to the loan have been distributed in an appropriate manner. The proof must consist of copies of the front and back of cancelled checks issued by the recipient for payment of reimbursable costs.

3. The disbursement of any money to a recipient must comply with the loan contract. Each payment must be approved based on the actual reimbursable costs incurred to date.

Sec. 115115.1. After the recipient has completed the water project, the recipient shall submit to the division for its approval:

a. A final engineering report that describes the water project as it was constructed;

b. Drawings of the water project as it was built which depict any material changes from the initial plans for the water project;

c. The dates the water project was tested, accepted and placed into service;

d. A notice of completion of the water project; and

e. A statement of the final costs for the water project.

2. The recipient may submit its final request for disbursement of the loan only after the division has approved the final engineering report submitted pursuant to subsection 1 of this section.

1. Upon completing the requirements of this section and payment of the final request submitted pursuant to subsection 2 of this section, any undisbursed amount of the sum authorized for payment will be made available to other applicants who have requested financial assistance from the account for the revolving fund.

Sec. 116116.1. The accounting standards contained in “Governmental Auditing Standards, 1994 Revision” published by the General Accounting Office are hereby adopted by reference. A copy of this publication is available at a cost of \$5.00 from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402 (Phone: (202) 512-1800) or is available for review at the U. S. Government Depository, Nevada State Library, Carson City, Nevada.

2. A recipient shall maintain separate water project accounts in accordance with generally accepted governmental accounting standards, including those adopted by reference in subsection 1 of this section.

Sec. 117. 1. A recipient shall:

- a. Establish an official file for the water project, which must contain an adequate record of all significant actions relating to the water project;
- b. Establish accounts that accurately and adequately show all amounts of money:
 - b 1) Received as financial assistance from the account for the revolving fund;
 - c 2) Received and spent on the water project; and

- d 3) Received as income from the water project;
 - c. Establish a system of accounting, which ensures that the final total costs of the water project, including all direct and indirect costs, are recorded accurately;
 - d. Establish and maintain such other accounts and records as are required by the division to comply with requirements for reporting established by the Federal Government;
 - e. Retain all records relating to the water project for at least 3 years after final repayment of financial assistance has been made or for any longer period required by the division.
2. Any records of a recipient relating to a water project must be made available at any reasonable time for inspection or copying by any authorized representative of the division.

Sec. 118. 1. Whenever an audit is required by federal law or by an agency of the Federal Government, or whenever the division determines that an audit is necessary to ensure the integrity of the account for the revolving fund, the division may require that an audit be performed of financial records relating to a water project.

2. Any audit required pursuant to this section must be performed at the expense of the recipient by a certified public accountant that is independent of the recipient.

3. The auditor required pursuant to subsection 2 of this section must prepare a report of the audit in the form prescribed by the division.

Sec. 119. 1. The recipient is encouraged to conduct value engineering if the total estimated cost of constructing the water project is more than \$10,000,000.

2. Justification for not conducting value engineering pursuant to subsection 1 must be provided to the division.

3. Any recommendations derived from the value engineering must be implemented to the extent feasible.

1. Peer-review is recommended on complicated water projects, regardless of total estimated cost.

2. As used in this section:

a. "value engineering" means a specialized technique for controlling costs which uses a systematic and creative approach to identify and to focus on any unnecessary cost to reduce the cost of a water project without affecting the reliability or efficiency of the water project; and

b. "Peer-review" means a cursory review of the design engineer's work by an engineer, equally competent with expertise in that discipline and specifically retained by the recipient to provide suggestions or comments which may enhance water project performance or aid in operation and maintenance.

Sec. 120. A system of user charges must:

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

3. Provide that each user will be notified at least annually, in conjunction with a regular bill or other means acceptable to the division, of the portion of the bill attributable to the cost of operation and maintenance, and replacement and debt retirement; and

4. Include an adequate system of financial management that will account accurately for revenues generated by the system and expenditures for operation and maintenance and replacement based on an adequate budget identifying the basis for determining the annual operation and maintenance costs, including the costs of personnel, equipment, services, supplies, energy and administration, as well as replacement.

Sec. 121. 1. If a separate rate structure is required to be implemented for loan repayment, a recipient may implement its system of user charges before the board for financing water takes action on a water project pursuant to the division's recommendation in Section 107 of this regulation.

2. If an existing rate structure for a public water system is utilized to repay a loan, the recipient shall provide the appropriate documentation to verify that requirement.

Sec. 122. 1. For publicly owned, public water systems, a recipient must comply with the appropriate provisions of Chapter 338 of the NRS and NAC in the award and administration of contracts for water projects.

2. The recipient shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding construction contracts.

3. The division shall review the awards to ensure that the recipient, his consultants and his contractors have complied with federal and state policies.

4. The division shall not participate in the resolution of any dispute relating to bidding. The resolution of any such dispute is the sole responsibility of the recipient.

Sec. 123. A recipient shall comply with the provisions of the Davis-Bacon Act, 40 U.S.C. Sections 276a et seq., if they apply, and with the applicable provisions of NRS Chapter 338 and all other applicable state and federal labor laws.

Sec. 124. 1. A recipient shall comply with the requirements of federal law concerning the participation of disadvantaged businesses.

2. Each recipient shall attempt to comply with the fair share percentages established annually for disadvantaged businesses by the division and the EPA. Any recipient not meeting these goals shall submit evidence of compliance with the affirmative steps identified in Section 125 of this regulation.

3. A recipient shall submit, with his 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 Section 125 of this regulation.

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 any procurement of \$10,000 or more is executed for the water project. As used in this subsection, “quarter” means a quarter in the federal fiscal year.

Sec. 125. The recipient shall ensure that, if its contractor for a water project awards any subcontracts relating to the water project, the contractor shall take 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. Assuring 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; and
4. Using the services of Nevada Economic Development Commission and the Nevada Office of Small Business to locate disadvantaged businesses capable of performing the work to be subcontracted.

Sec. 126. 1. A recipient shall notify the division after the action occurs in writing of:

- a. The award of the prime construction contract for the water project within 5 working days;
- b. The beginning of construction of the water project;
- c. Any substantial change in the scope of the water project and each executed change order;
- d. The date on which construction of the water project is anticipated to be completed;
- e. The cessation of all major construction work on the water project, in any case where the cessation of work is expected to or does continue for 30 days or more;
- f. Any circumstance or condition that is expected to, or does delay, the completion of construction for 90 days or more after the anticipated date of completion of construction of the water project;
- g. The completion of construction of the water project; and
- h. The beginning of the operation of the water project.

Sec. 127. The division will conduct oversight inspections during the construction of a water project. The primary purpose of any such inspection must be to ascertain that the recipient is constructing the water project according to the approved plans and specifications and applicable contract requirements. The first inspection will normally be conducted by the time the water project is 10 percent complete. Subsequent inspections will be conducted as they are deemed necessary by the division.

Sec. 128. Before a water project is 90 percent completed a recipient shall submit to the division a draft of the manual of operations and maintenance for the water project as required pursuant to NAC 445A.6667. Not more than 90 percent of the total financial assistance for the water project may be provided until the manual has been reviewed and approved by the division.

Sec. 129129.A recipient shall supply the division with one set of as-built drawings of the water project within 90 days of the completion of the project.

Sec. 130130.1. The division shall establish, in consultation with the recipient the date that water project operations are capable of being operated for the purpose of establishing of the water project pursuant to NAC 445A.66715.

2. Before any certification of the water project is submitted pursuant to subsection 1 of this section, the recipient shall coordinate with the division a final inspection of the water project to

ensure that its facilities are operating and capable of meeting public health and water quality requirements.

3. After a water project has been in operation for 1 year after the date specified in the notice of completion of the water project, the recipient shall report to the division that the water project either meets or fails to meet performance standards. The water project must comply with all applicable design specifications and public health and water quality requirements. At the request of a recipient, the division may assist the recipient in developing applicable performance standards.

4. If the water project cannot be affirmatively certified as required in subsection 1 of this section, the recipient shall prepare a report of corrective action which includes an analysis of the cause of the failure of the water project to meet performance standards and an estimate of the nature, scope and cost of necessary corrective action. The division shall conduct follow-up inspections as necessary to determine whether the water project meets performance standards. The cost of any corrective action may not be eligible for financial assistance from the account for the revolving fund.

5. As used in this section, “performance standards” means the criteria used to evaluate the compliance of a water project with the requirements contained in design specifications, and Chapter 445A of the NRS and NAC.

Sec. 131131.A recipient shall notify the division of any claims against the owner, the professional engineer, the contractor or any subcontractor arising from or related to the water project. Resolution of claims is the responsibility of the recipient.

Sec. 132132.1. A recipient shall not abandon, substantially discontinue use of, or dispose of a water project during its useful life without the prior written approval of the division.

2. For the purposes of this section “useful life” means the period of time over which a water project provides a service without becoming obsolete or inoperable.

Sec. 133133.1. Where these regulations conflict with the provisions of NAC 445A.450 to 445A.6731, inclusive, the provisions of NAC 445A.450 to 445A.6731, inclusive, shall prevail.

2. If any of the provisions of Sections 1 through 133, inclusive, of this regulation, or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.