

**PROPOSED REGULATION OF THE  
BOARD FOR FINANCING WATER PROJECTS**

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BOARD FOR FINANCING WATER PROJECTS**

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

AUTHORITY: NRS 349.982

**Section 1.** Chapter 349 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

**Sec. 2.** *“Governing Body” has the meaning ascribed to it in NRS 278.015.*

**Sec. 3.** *“Water Resource Plan” means a plan created pursuant to NRS 278.0228.*

**Sec. 4.** *“Division” means the Nevada Division of Environmental Protection of the Department.*

**Sec. 5.** *“Authorized Representative” means a person or persons who are legally appointed by the governing body of the purveyor of water, eligible recipient, or governing body to represent the project to the Board and execute legal agreements on behalf of the purveyor of water, eligible recipient, or governing body.*

**Sec. 6.** *“Fiscal sustainability plan” means a plan that:*

- 1. Is reviewed every five years;*
- 2. Has evaluated all system capital assets;*
- 3. Has determined the current condition of those capital assets;*
- 4. Makes a list of critical capital assets in the system;*
- 5. Determines the cost for repairing or rehabilitating capital assets on a regular basis; and*

*6. Evaluates any water or energy efficiency within the system.*

*Sec. 7. “Capital Replacement Reserve Account” means a fund or funds that the purveyor of water, eligible recipient, or governing body maintains in perpetuity for the purpose of replacing capital assets of the utility. The fund cannot be used for operations, maintenance, or debt service requirements of the system.*

**Sec. 8.** NAC 349.464 is hereby amended to read as follows:

**“Program” defined.** (NRS 349.982)

“Program” means the program established pursuant to NRS 349.981 to provide grants of money to purveyors of water and eligible recipients to pay for costs of improvements *and projects as authorized by NRS 349.981* [~~and for costs associated with:~~

~~—1.—Connecting to a municipal water system; or~~

~~—2.—Abandoning an individual sewage disposal system and connecting the property formerly served by the abandoned individual sewage disposal system to a community sewage disposal system.]~~

**Sec. 9.** NAC 349.467 is hereby amended to read as follows:

**“Requirements for public water systems” defined.** (NRS 349.982)

“Requirements for public water systems” means the requirements imposed:

1. By the [~~State Board of Health~~] *Division* pursuant to NRS 445A.800 to 445A.955, inclusive;

or

2. Pursuant to the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.

**Sec. 10.** NAC 349.475 is hereby amended to read as follows:

Eligibility for grant; filing of letter of intent.

1. The Board will provide a grant to a purveyor of water [~~or an eligible recipient~~] only if:

~~[(a) The grant will assist:]~~

~~[(1)]~~**(a) The purveyor of water meets the requirements of NRS 349.983, and**

**(b) The purveyor of water ~~[(is)]~~is constructing a capital improvement to the *publicly owned* community water system or *publicly owned* nontransient water system that will directly enable the purveyor of water to comply with the requirements for public water systems; ~~[(or)]~~**and****

~~[(2) The eligible recipient in carrying out an improvement set forth in paragraph (b), (c), (d) or (e) of subsection 1 of NRS 349.981;]~~

~~—[(b)]~~**(c) The purveyor of water ~~[(or eligible recipient)]~~ is unable to finance from its own resources the proposed improvement or costs associated with connecting to a municipal water system or community sewage disposal system; **and****

~~—[(e)]~~**(d) The purveyor of water is currently included on the priority list for the Account for the Revolving Fund; and**

~~[(e)]~~**(e) Water meters or other approved devices which will measure water delivered to each water user are installed and used in any community water system or nontransient water system for which an application for a grant is made, unless the Board determines that water meters or such other devices are not required to ensure effective monitoring and conservation of water in that community water system or nontransient water system.**

**2. The Board will provide a grant to an eligible recipient only if the eligible recipient:**

**(a) Is carrying out an improvement set forth in NRS 349.981; and**

**(b) Is defined as an eligible recipient set forth in NRS 349.981(4)(a); and**

**(c) Was in existence on January 1, 1995; and**

**(d) Is unable to finance from its own resources the proposed improvement.**

**3. The Board will provide a grant to an eligible governing body only if:**

- (a) The governing body was in existence on January 1, 1995; and*
- (b) The governing body is unable to finance from its own resources the proposed water resources plan; and*
- (c) Funding of the development of the water resource plan is an eligible use of bond proceeds related to any bond issued per NRS 349.986.*

~~[2]~~ 4. To apply for a grant, a purveyor of water, ~~[or]~~ eligible recipient, *or governing body* must file with the ~~[Board]~~ *Division* a letter of intent. The letter *of intent must be submitted electronically, through the Nevada Infrastructure Financial System at <https://ndepifs.nv.gov/>; or by any other method authorized by the Division. The letter of intent* must include:

- (a) The *legal* name, *mailing* address, *email address*, and telephone number of the applicant.
- (b) The date on which the service was first provided by the ~~[community water system, nontransient water system, sewage disposal system or other system]~~ *the purveyor of water, eligible recipient, or governing body*, for which the application for a grant was made. If the exact date is not known, the month and year must be provided.
- (c) The title or name *of the project*, the location *of the project*, and a brief description of the proposed improvement, including maps ~~[or]~~ *and* preliminary plans.
- (d) The number of persons or other entities served ~~[and the assessed value of the property within the area that is served by the community water system, nontransient water system, sewage disposal system or other system]~~ *by the purveyor of water, eligible recipient, or governing body* for which the application for a grant was made.
- (e) ~~[A preliminary]~~ *An* estimate of the cost of the proposed improvement ~~[or costs associated with connecting to a municipal water system or community sewage disposal system,]~~

*that is prepared by a licensed professional engineer pursuant to chapter 625 of NRS,* including, without limitation, the cost of construction, engineering, *materials, permitting, construction* contingencies and any additional costs necessary for financing the improvement.

- (f) A description of future improvements planned by the applicant *over the next five (5) years*, if any, that are not part of the proposed improvement for which the application for a grant is made.
- (g) A ~~brief~~ description of how the proposed improvement will assist the purveyor of water, *eligible recipient, or governing body*, in complying with the *legal* requirements for ~~public water systems or the~~ *the purveyor of water, eligible recipient, or governing body* in carrying out the purpose of the proposed improvement.
- (h) *Financial* ~~D~~ documentation *required by the Division to demonstrate the* ~~concerning the~~ inability of the applicant to finance the proposed ~~improvement or costs associated with connecting to a municipal water system or community sewage disposal system~~ *project*, including, but not limited to:
- (1) Audited Financial statements for the three (3) years immediately preceding the date that the letter of intent is submitted;*
  - ~~(1)~~*(2)* Letters from local lending institutions;
  - ~~(2)~~*(3)* Letters from financial advisers, accountants or fiscal agents, if applicable;
  - (4) The State approved budget for the current and if applicable, upcoming fiscal year(s);*
  - (5) Current adopted user rates;*

*(6) The applicant's current requirements for cash reserves for debt service and capital improvements for previously issued debt;*

*(7) The amount of money available for the proposed improvement other than the money to be derived from the program;*

~~[(3)]~~(8) Copies of any applications for funding the ~~proposed improvement~~ project or costs filed by the applicant and, if the application is for a loan, a copy of any documentation indicating that the loan was approved or denied or the likelihood that the loan will be approved, including, without limitation, such an application and documentation concerning a loan from:

(I) The Account for the Revolving Fund *as described in NRS 445A.255*; or

(II) ~~The fund described in NAC 445A.728; or~~ *The Account to Finance the Construction of Treatment Works and the Implementation of Pollution Control Projects as described in NRS 445A.120*; or

(III) Any other governmental agency that provides financial assistance for improvements and with which the applicant has applied for a loan; and

~~[(4)]~~(9) A statement justifying the inability of the applicant to finance the proposed improvement or costs.

~~[(i) A brief demonstration that the applicant will be viable upon completion of the proposed improvement which includes, without limitation, audited financial statements for the 3 years immediately preceding the date that the letter of intent is filed with the Board and a recently approved budget.]~~

~~[(j)](i)~~ If applicable, a statement that the plan of water conservation adopted pursuant to NRS 540.131 will be filed with the Water Planning Section of the Division of Water Resources of the Department before receipt of the grant.

~~[(k)](j)~~ Any additional information required by the Board.

~~— [3. A letter of intent must be directed to the Board at either:~~

~~— (a) The address specified in the application for a grant provided by the Division of Environmental Protection of the Department to the applicant; or~~

~~— (b) The address otherwise provided by the Division of Environmental Protection of the Department to the applicant for that purpose.~~

~~— 4. An applicant shall provide nine copies of the letter of intent to the Division of Environmental Protection of the Department.]~~

**Sec. 11.** NAC 349.495 is hereby amended to read as follows:

**Application: Submission.** (NRS 349.982)

1. If a letter of intent for a proposed improvement *meets the requirements outlined in subsection 4 of NAC 349.475* ~~[or proposed costs is approved,]~~ an applicant must submit ~~[an original and eight copies of]~~ an application to the ~~[Board]~~*Division*.

2. An application submitted pursuant to subsection 1 must be ~~[-~~

~~(a) -]~~ *submitted electronically, through the Nevada Infrastructure Financial System at <https://ndepifs.nv.gov/>; or by any other method authorized by the Division.* ~~[In the form~~

~~provided by the Division of Environmental Protection of the Department]; and~~

~~(b) [Addressed to the Board as provided in subsection 3 of NAC 349.475]~~

**Sec. 12.** NAC 349.500 is hereby amended to read as follows:

**Application: Required items and information; waiver of requirements.** (NRS 349.982)



1. Except as otherwise provided in subsections 2 and 3, the application must *be submitted electronically, through the Nevada Infrastructure Financial System at <https://ndepifs.nv.gov/>; or by any other method authorized by the Division. The letter of intent must* include the following items and information:

(a) *A complete and legible Letter of Intent as required by subsection 4 of NAC 349.475.*

~~[(a)](b)~~ A preliminary engineering report for the construction~~[,]~~ *and* operation and maintenance of the proposed improvement *formatted according to Rural Utilities Services Bulletin 1780-2 from the United States Department of Agriculture*~~[,] including:~~

~~— (1) The expected costs and benefits of the project;~~

~~— (2) Plans for the development of the facilities of the applicant; and~~

~~— (3) The economic justification for and expected feasibility of the project,]~~

↪ as prepared by a person licensed as a professional engineer pursuant to chapter 625 of NRS.

~~[(b)](c)~~~~[A complete and legible legal description of the entire area of service for the proposed improvement,]~~ *Any service area maps required by the Division, including, but not limited to:*

~~(1)~~~~[(a)]~~ *A map showing the layout of the proposed improvement and the location and number of persons served by the proposed improvement in relation to maps of the United States Public Lands Survey, assessor's maps, or aerial or other similar maps showing sections and townships*~~[,]~~; *and*

~~[(e)](2)~~ A complete and legible copy of the legal description of the property that will be occupied by the proposed improvement, including the assessor's plot maps on which the proposed improvement is identified.

(d) Proof of ownership, rights-of-way, easements or agreements, showing that the applicant holds or is able to acquire all lands, other than public lands, interests therein and water rights

necessary for the construction of the proposed improvement. Copies of deeds to lands to be occupied, records of surveys, easements, agreements or permits to appropriate water may be used as evidence of ownership.

(e) A report concerning the amount of water required to satisfy the needs of the proposed improvement, including:

(1) The source and amounts of supply; *and*

(2) The rights to the water; *and*

(3) The quality of the water going into the proposed improvement; *and*

(4) The quality of treated water flowing out of the proposed improvement; and

(5) A schedule indicating the volume of water required each month from the proposed improvement to meet the needs of the customers of the community water system or nontransient water system.

(f) A report concerning the implementation of the plan of water conservation adopted by the applicant pursuant to NRS 540.131, including:

(1) A copy of the plan; *and*

(2) The most recent schedule established by the applicant for carrying out the plan; and

(3) An analysis of the effectiveness of the plan.

(g) A complete and itemized list of the total estimated cost of the proposed improvement, including an estimate for construction costs, contingencies, engineering fees, administrative fees, legal fees and financing fees [.] *that is prepared by a Nevada licensed professional engineer pursuant to chapter 625 of NRS.*

- (h) An estimate of the capital costs required for the installation of water meters on all service connections to the ~~[community water system or nontransient water]~~ system, including an analysis of the feasibility of installing the water meters.
- (i) Information which demonstrates that the proposed improvement complies with applicable local regulations governing the use of land and water and any other applicable regulations and ordinances.
- (j) A list of the permits required to carry out the proposed improvement, with the anticipated dates and conditions for approval of those permits.
- (k) A summary of public participation in the development of the proposed improvement or project. Copies of board meeting minutes, public workshops, media events, or press releases may be used as evidence of public participation.***
- ~~[(k)]~~***(l)*** The estimated cost of operation and maintenance for the proposed improvement.
- ~~[(l)]~~***(m)*** The amount of money available for the proposed improvement other than the money to be derived from the program, including terms of repayment if short-term or long-term financing is contemplated as a source of funding.
- ~~[(m) A plan for the construction of any related improvements during the next 5 years.]~~
- (n) Copies of the current documents prepared by or on behalf of the applicant pursuant to NRS 350.013, which depict the effect of the proposed improvement on the financial capacity of the applicant.
- (o) Data and information deemed necessary by the Division of Environmental Protection of the Department or by the financial advisers or other consultants of the Division.
- (p) A demonstration that the applicant will be viable upon completion of the proposed improvement. For the purposes of this section, viable means:***

*(1) The applicant has financial capability over their system.*

*(I) The applicant has the ability to pay the costs related to maintenance, operations, debt service, required cash reserves, depreciation, and capital expenses.*

*(II) The applicant has established a capital replacement reserve account and funds the account at least annually based on the depreciation of the short-lived assets of the system (15 years or less) using a straight-line methodology.*

*(III) The applicant maintains creditworthiness.*

*(IV) The applicant maintains adequate fiscal controls and accounting methods required for the operation of the system.*

*(2) The applicant has managerial capability over their system.*

*(I) The applicant has authority for maintaining the system.*

*(II) The applicant has qualified staff to maintain the system.*

*(III) The applicant has been able to work with jurisdictional, regulatory, trade organizations, industry organizations, other governmental agencies, and persons served by the system.*

*(3) The applicant has technical capability over their system.*

*(I) The applicant employs operators who have technical knowledge and licenses to operate the system.*

*(II) If applicable, the applicant can obtain an adequate and reliable source of water that is necessary to provide the quantity and quality of water required.*

*(III) If applicable, the applicant can establish and maintain an adequate infrastructure for the system's needs.*

2. The Board may waive any of the requirements of subsection 1 upon written request of the applicant.
3. An applicant is not required to include an item and information required by subsection 1 if the item or information is not applicable to the type of improvement proposed in the application.

**Sec. 13.** NAC 349.505 is hereby amended to read as follows:

**Determination of financial feasibility of proposed improvement; evaluation of certain abilities of applicant and charge for water; determination of exceptional circumstances** (NRS 349.982).

Upon receipt of an application, the Division [~~of Environmental Protection of the Department~~] shall:

*1. Review the application and all supporting materials required by the Division to verify the purveyor of water, eligible recipient, or governing body has:*

*(a) submitted all necessary information required in the application; and*

*(b) evaluated the purveyor of water, eligible recipient, or governing body has the technical capability to:*

*(1) employ operators who have the technical knowledge and ability to operate the system;*  
*and*

*(2) if applicable, obtain an adequate and reliable source of water that is necessary to provide the quantity and quality of water required by the system.*

*(c) evaluate the purveyor of water, eligible recipient, or governing body has the managerial capability to conduct its administrative affairs in a manner that ensures compliance with all applicable standards based on:*

*(1) The accountability, responsibility and authority of the owner or operator of the system;*  
*and*

*(2) The personnel and organization of the system; and*

*(3) The ability of the persons who manage the system to work with:*

*(I) Jurisdictional, regulatory and other governmental agencies; and*

*(II) Trade and industry organizations; and*

*(III) The persons served by the system.*

~~[1.]~~2. If necessary, forward all data and information contained in the application to any financial adviser, attorney and other person retained by the Division to determine the financial feasibility of the proposed improvement.

~~[2.]~~3. If applicable, evaluate the ability of the applicant to provide for:

- (a) The continuing replacement of components of the water system that are functionally obsolete or worn out; *and*
- (b) Current and anticipated debt service; and
- (c) Current and future expenses of operation and maintenance.

~~[3.]~~4. If applicable, evaluate the charge for water that customers of the ~~[community water system or nontransient water system]~~ *applicant's system* are paying and determine if the charge is sufficient to satisfy expenses related to:

- (a) The operation and maintenance of the ~~[community water system or nontransient water system]~~ *applicant's current and future system*; and

*(b) Current and anticipated debt service; and*

- ~~([b])~~c) Periodically replacing *capital asset* components of the ~~[community water system or nontransient water system]~~ *applicant's system* that are functionally obsolete or worn out.

*(d) For the purposes of this subsection, “sufficient” is defined as the amount necessary to cover all fixed and variable expenses of the system, including but not limited to, salaries and benefits, required materials and chemicals, utilities, testing and sampling, permits and fees, contracts and subcontracts, licenses and fees, accounting, legal, administration, travel, emergency reserves, debt service, capital replacement, and any other expenses the individual system needs to maintain their system for the health and safety of the public and the environment.*

[4]5. If applicable, determine whether any exceptional circumstances exist in the area served by the ~~[community water system or nontransient water system]~~ *applicant*.

Sec. 14. NAC 349.510 is hereby amended to read as follows:

**Review of application and feasibility reports; incomplete application; reports to Board.**

(NRS 349.982)

1. ~~[Within 20 working days after receipt of an application, t]~~ *The Division [of Environmental Protection of the Department]* shall review the application and determine if all information required ~~[by the Board]~~ has been provided.
2. If the Division ~~[of Environmental Protection of the Department]~~ determines that the application is incomplete, the Division ~~[of Environmental Protection of the Department]~~ shall ~~[, within 30 working days after the receipt of the application,]~~ *promptly* notify the applicant of the deficiencies and provide the applicant with instructions for satisfying those deficiencies. ~~[The applicant must comply with those instructions within 45 working days after the receipt of the instructions, except that, upon written request by the applicant and for good cause, the Division of Environmental Protection of the Department may once extend the period for compliance by the applicant.]~~ If the applicant submits any additional information concerning the application

~~{within the appropriate period}~~, the Division ~~{of Environmental Protection of the Department}~~ shall ~~[, within 30 working days after receipt of that information,]~~ determine whether the application is complete. If the applicant does not complete the application because the applicant failed to comply with the instructions provided to the applicant by the Division ~~{of Environmental Protection of the Department}~~ or failed to submit any additional information required by the Division ~~{of Environmental Protection of the Department within the appropriate period}~~, the Division ~~{of Environmental Protection of the Department}~~ shall recommend that the Board deny the application.

3. ~~{Within 30 working days after}~~ ***If*** the Division ~~{of Environmental Protection of the Department}~~ determines that the application is complete, the Division ~~{of Environmental Protection of the Department and the Bureau or the Water Planning Section of the Division of Water Resources of the Department, as appropriate given the type of improvement proposed in the application, shall review}~~ ***shall promptly forward a copy of the application to the Bureau, the Bureau of Water Pollution Control for the Division, or the Division of Water Resources of the Department, as appropriate given the type of improvement or project proposed in the application. The entity receiving a copy of the application shall review*** the application and feasibility reports to determine if the proposed improvement complies with:

- (a) The requirements for public water systems if the applicant is a purveyor of water; or
- (b) The applicable federal, state and local requirements for the system for which the application for a grant was made if the applicant is an eligible recipient~~{.}~~; ***or***

***(c) The applicable requirements for a water resource plan to a governing body.***

4. The Division ~~{of Environmental Protection of the Department}~~ shall prepare a report to the Board concerning the proposed ~~[improvement or costs within 60 working days after receipt~~



~~of the completed application]~~ *project for the next regularly scheduled Board meeting.* The Division ~~[of Environmental Protection of the Department]~~ shall ensure that:

- (a) It receives information concerning the review of the application by the Bureau, *the Bureau of Water Pollution Control*, or the ~~[Water Planning Section of the]~~ Division of Water Resources of the Department, as applicable; and
  - (b) The information received pursuant to paragraph (a) is incorporated in the report prepared by the Division ~~[of Environmental Protection of the Department]~~.
5. The report to the Board prepared by the Division ~~[of Environmental Protection of the Department]~~ must contain:
- (a) The ~~[application]~~ *applicant's information, including, but not limited to, the name, location, population served, maps of the project, need for the project, project alternatives, conservation efforts, construction timeline, and detailed cost of the entire project; and*
  - (b) A summary of the economic justification for and financial feasibility of the proposed improvement *or project; and*
  - (c) The status of the funding available to the applicant for the proposed improvement *or project* ~~[-or costs]~~; and
  - (d) Evaluations by the Division ~~[of Environmental Protection of the Department]~~ concerning:
    - (1) Whether the applicant will be viable upon completion of the proposed improvement *or project; and*
    - (2) If applicable, the effectiveness of the applicant's efforts to conserve water and of the plan of water conservation adopted by the applicant pursuant to NRS 540.131; *and*
    - (3) The need for and the feasibility of installing water meters on all service connections to the community water system or nontransient water system; and

(4) The information that results from the evaluations and determinations conducted pursuant to subsections 3 and 4 of NAC 349.505~~f, j~~, and

*(e) A summary of public participation in the development of the proposed project, and*

*(f) The status of funding available from the Fund for the report to the Board.*

**Sec. 15.** NAC 349.515 is hereby amended to read as follows:

**Receipt of permits or authority to proceed required ~~;~~ **exceptions**]; determination of sufficient water rights. (NRS 349.982)**

1. *The Division shall not authorize the entity to proceed to construction utilizing the awarded grant, unless permits necessary for construction and compliance with any requirements for planning and zoning are received from the Permittee. ~~[Except as otherwise provided in subsections 2 and 3, an application must not be approved by the Board until:~~*

~~—(a) Copies of any permits necessary for compliance with any requirements for planning and zoning, including any necessary variances or special use permits, are received by the Board; or~~

~~—(b) Each agency issuing a permit specified in paragraph (a) has given written authorization to proceed with the proposed improvement and a copy of the authorization is received by the Board.~~

~~—2. The Board may waive the requirements of subsection 1 if it has received information from its counsel or any other reliable source that the proposed improvement will receive or has received all permits required by any governmental agency which are necessary to proceed with the construction, improvement, rehabilitation or redevelopment of the proposed improvement.~~

~~—3. The Board may, before it receives any permit required pursuant to subsection 1 that requires the submission of a detailed engineering design, approve an application if there are no foreseeable conditions threatening the feasibility of the proposed improvement.]~~

[4]2. *If applicable to the improvement or project, [±]*the Board will not approve an application until it determines that the applicant owns sufficient water rights to carry out the proposed improvement or there are water rights otherwise available and committed to the proposed improvement.

**Sec. 16.** NAC 349.520 is hereby amended to read as follows:

**Disapproval of application: Procedure; notice. (NRS 349.982)**

1. If the Board determines not to approve an application, it will prepare findings and conclusions concerning its determination and adopt a resolution stating the reasons for the disapproval.
2. The Board will give the applicant and the Division [~~of Environmental Protection of the Department~~] notice of its action.

**Sec. 17.** NAC 349.530 is hereby amended to read as follows:

**Review of completed application; determinations by Board. (NRS 349.982)**

1. Except as otherwise provided in subsection 2, the Board will review the completed application and determine whether, based on the records and documents submitted to the Board concerning the proposed improvement or costs:
  - (a) The proposed improvement *or project* is economically justified and financially feasible[±], *and*
  - (b) The proposed improvement *or project* complies with the provisions of NRS 349.980 to 349.987, inclusive[±], *and*
  - (c) The plan for development of the proposed improvement *or project* is satisfactory[±], *and*
  - (d) The applicant is able to obtain the financing required to complete the proposed improvement *or project*[±], *and*

(e) The applicant has taken sufficient and reasonable efforts to determine whether the proposed improvement *or project* conflicts with any regional master plan of any local, state or federal governing authority, and those efforts have not revealed such a conflict, *if applicable*~~[-]~~, *and*

(f) The proposed improvement *or project* will not use or waste excessive quantities of water, *if applicable*.

2. If the Board determines pursuant to paragraph (a) of subsection 1 that the proposed improvement *or project* is not economically justified and financially feasible, the Board will, based on the records and documents submitted to the Board concerning the proposed improvement *or project*, determine whether the ~~[construction of the]~~ proposed improvement *or project* is in the interest of the State and brings the ~~[purveyor of water into compliance with the requirements for public water systems or brings the eligible recipient]~~ *applicant* into compliance with any applicable federal, state or local laws with which the ~~[eligible recipient]~~ *applicant* is not in compliance. In making its determination, the Board will consider, if applicable:

(a) Whether there are any communities located near the community water system or nontransient water system that offer similar living conditions with potable water;

(b) Whether the applicant has taken sufficient and reasonable efforts to discover an alternate source of potable water for the community water system or nontransient water system; and

(c) Whether any other useable source of potable water for the community water system or nontransient water system has been discovered.

3. The Board will approve or disapprove the proposed improvement ~~[or costs]~~ *or project* taking into consideration the determinations made pursuant to subsections 1 and 2. If the Board approves the proposed improvement ~~[or costs]~~ *or project*, it will take into consideration the amount of money in the Fund and determine whether to provide a grant for the proposed

improvement [~~or costs~~] *or project*. The Board may give precedence to improvements *and/or projects* which provide maximum benefits to the State.

**Sec. 18.** NAC 349.535 is hereby amended to read as follows:

**Determination to provide grant: Action by Board; amount of grant; duties of Division of Environmental Protection of the Department. (NRS 349.982)**

1. If the Board determines to provide a grant, it will adopt a resolution which must include:

(a) A statement of the approval of the Board that sets forth its findings of fact concerning its determinations made pursuant to NAC 349.530; *and*

(b) The [~~application~~] *report to the Board from the Division made pursuant to NAC 349.510*; and

(c) The terms for providing the grant to the applicant.

2. To determine the amount of a grant to a purveyor of water, the Board will, pursuant to NRS 349.983, develop and use a scale which the Board may periodically revise. The factors the Board will consider in developing the scale include, without limitation:

(a) Whether the improvement for which the grant is requested is included on the priority list for the Account for the Revolving Fund for the current year;

(b) If applicable, the rank of the improvement for which the grant is requested in relation to other projects on the priority list for the Account for the Revolving Fund for the current year;

(c) The *average and* median household income for the community or area that is served by the community water system or nontransient water system for which the grant is requested as compared to the *average and* median household income in this State;

(d) The number of persons served by the community water system or nontransient water system for which the grant is requested;

(e) ~~[The amount of reduction in the leakage of water, if any, in the community water system or nontransient water system for which the grant is requested;]~~ *Whether the applicant has or has not obtained alternate funding up to the maximum extent possible for the improvement or project;*

(f) The effectiveness of any water conservation in the area that is served by the community water system or nontransient water system for which the grant is requested; and

(g) The monthly charge for water that residential customers of the community water system or nontransient water system for which the grant is requested are paying for the month in which the application for a grant is submitted~~[,]~~,

*(h) Whether the applicant has demonstrated financial viability by developing a fiscal sustainability plan,*

*(i) Whether the applicant has up-to-date and compliant operations and maintenance manuals, cross-connection control plans, and emergency response plans,*

*(j) Whether the applicant has an approved, up-to-date source water protection plan.*

3. The Board will send a copy of the resolution to the Division *upon adoption*. ~~[of Environmental Protection of the Department]~~

*4. Per subsection (c) of paragraph 1, the terms that shall be included in the resolution for providing a grant to the applicant shall include:*

*(a) The award of grant funds is contingent upon the availability of grant funds upon the issuance of state bonds. The Board shall not be obligated to make any payments to the Recipient in the event that sufficient bond funds as determined by the Board and the Division do not become available for any reason, and*

*(b) Grantee assurance that water rates will continue to meet or exceed the grantees required revenues to cover operations, maintenance, debt service and capital replacement reserves of the current and future system needs, and*

*(c) A fiscal sustainability plan, prepared by the grantee and submitted to the Division prior to the final draw request of the funding agreement, and*

*(d) Grantee agreement to maintain a capital replacement reserve account and fund the account at least annually based on the depreciation of the short-lived assets of the system (15 years or less) using a straight-line methodology, and*

*(e) Grantee agreement to utilize the funds provided in this funding agreement within three years.*

*(f) Demonstration that the grantee has obtained all funding necessary to complete the project,*

*(g) For improvements and projects for water purveyors, assurance that water meters are installed and operating, or will be installed prior to the Division executing a funding agreement with the applicant.*

*(h) Any other conditions the Board includes in the resolution.*

~~[4. Within 10 days after]~~ **5. Upon** receipt of the resolution of the Board, the Division shall:

(a) Notify the applicant and the Director of the decision of the Board.

(b) ~~[Send]~~ **Request** the applicant ~~[an inducement letter which]:~~

~~[(1) States the intention of the Director to issue the grant to be paid as other claims against the State are paid if the improvement meets local, state and federal requirements;~~

~~(2) States the amount of the grant;~~

~~(3) States that if the grant is to be made from the proceeds of bonds, it will be conditioned upon the successful issuance of the bonds;]~~

~~(4)1~~ ~~[Directs the applicant]~~ To submit any supporting documentation required by the Division; and

~~(5)2~~ ~~[Directs the applicant]~~ To comply with any conditions imposed upon the grant and to enter into the funding agreement required pursuant to NAC 349.549 within 6 months after the date the Board approves the grant or such other date as the Board specifies.

**Sec. 19.** NAC 349.540 is hereby amended to read as follows:

**Request for issuance of general obligation bonds. (NRS 349.982)**

Upon ~~[receipt of a resolution of the Board approving the improvement or costs]~~ *approved legislation for bond issuance*, the Division ~~[of Environmental Protection of the Department]~~ may request the Office of the State Treasurer to issue general obligation bonds in an amount sufficient to fund the grant.

**Sec. 20.** NAC 349.549 is hereby amended to read as follows:

**Administrative fee; funding agreement. (NRS 349.982)**

1. The recipient of a grant under the program shall pay to the Division ~~[of Environmental Protection of the Department]~~ an administrative fee of \$1,000. *The fee cannot be included as an eligible cost of the program.* The money must be used for the purposes set forth in subsection 4 of NRS 349.982.
2. The recipient of a grant under the program and the Director, *or appointed representative of the Director*, shall, if all conditions of the grant have been met, execute a funding agreement that complies with the requirements of this section.
3. The funding agreement must:
  - (a) Be for a term of not more than ~~[5]~~3 years.



- (b) Set forth the maximum amount disbursable pursuant to the grant, the percentage of eligible costs that will be paid and the amount of the minimum contribution to be paid by the recipient.
- (c) Distinguish costs that are eligible and ineligible for payment pursuant to the grant and set forth formulas for sharing the cost of components of the improvement that are partially eligible for payment pursuant to the grant.
- (d) Describe procedures for the disbursement of the grant.
- (e) Set forth any state requirements regarding:
  - (1) Compliance with the laws of this State;
  - (2) Access by the State to any accounts and books of the recipient that relate to the improvement;
  - (3) Access to the site of the improvement for inspection by state personnel;
  - (4) Indemnification of the State;
  - (5) The acknowledgment of the amount contributed by the State pursuant to the grant;
  - (6) The submission of financial reports and reports concerning the progress of the improvement;
  - (7) The maintenance of records;
  - (8) The provision of addresses for notification and other communication;
  - (9) The approval of plans and specifications;
  - (10) The submission of proof of the receipt of any required permits;
  - (11) The notification of the State concerning any difficulties in the construction or funding of the improvement that could adversely affect the improvement;

(12) The notification of the State concerning any claims made against the recipient of the grant, the engineer or contractor for the improvement, or any other person associated with the improvement; and

(13) The submission, review and approval of contract change orders.

(f) Set forth provisions concerning:

(1) Requirements for the methods of procurement and applicability of the provisions of chapter 332 of NRS;

(2) Any default or termination;

(3) The rights of the State if the agreement is terminated;

(4) The right of the State to commence legal proceedings;

(5) The right of the State to require audits at the expense of the recipient;

(6) The amendment of the agreement;

(7) Requirements for notification of the parties to the agreement; and

(8) The release of any liability arising from a default.

*(9) Any terms and conditions established in the funding resolution in conformance with NAC 349.535.*

(g) Set forth any other contractual provisions relevant to the grant or improvement.

**Sec. 21.** NAC 349.554 is hereby amended to read as follows:

**Duties of recipient of grant before commencement of bidding and construction. (NRS**

349.982) The recipient of a grant under the program:

1. Shall, before:

- (a) Bids for the improvement are advertised, submit to the Division [~~of Environmental Protection of the Department~~] the engineering design, plans and specifications for the improvement.
- (b) Bids for the improvement are opened, submit to the Division the bidding schedules and item descriptions for measurement and payment.
- (c) Construction of the improvement is begun, submit to the Division:
- (1) Proof of the receipt of all necessary permits.
  - (2) Documentation that any procedures for purchasing and contracting required by the State are being followed.
  - (3) The agendas for any conferences held before bidding and construction.
  - (4) Schedules for procurement and construction.
  - (5) Proof that the funding required to be contributed by the recipient of the grant has been committed to the improvement.
  - (6) Any other documents that the Division deems necessary to verify compliance with the goals of the program.
2. Shall not allow the commencement of any construction relating to the improvement until the Division provides the recipient of the grant with a written notice to proceed with the improvement. The Division shall, upon its approval of the items received pursuant to subsection 1, provide the recipient with that notice.

**Sec. 22.** NAC 349.559 is hereby amended to read as follows:

**Duties of recipient of grant: Submission of information to Division of Environmental Protection of Department. (NRS 349.982)**

The recipient of a grant under the program shall:

1. During the construction of the improvement, provide the Division [~~of Environmental Protection of the Department~~] with such documents as the Division deems necessary to determine compliance with the funding agreement.
2. Submit to the Division monthly reports concerning the progress of the construction of the improvement. Each report must include:
  - (a) A brief description of any work performed on the improvement after the date of the report submitted by the recipient pursuant to this subsection for the immediately preceding month;
  - (b) A discussion of any problems encountered that may cause a deviation from the schedule of construction for the improvement or an adjustment to the budget for the improvement; and
  - (c) Copies of any work directives and change orders issued to the contractor during the period specified in paragraph (a), regardless of whether the contractor approved the directives or orders.
3. Submit to the Division quarterly financial reports concerning the construction of the improvement. Each report must:
  - (a) Include a current budget for the completion of the improvement that accurately reflects:
    - (1) Any costs incurred up to the date of the report; *and*
    - (2) The anticipated monthly costs to complete the improvement; and
    - (3) The status of available funding; and
  - (b) Be accompanied by copies of any change orders affecting the scope or cost of any components of the improvement that are eligible for payment pursuant to the grant.
4. Provide the Division with current schedules for the construction of the improvement and such other current information as the Division deems necessary to ensure that:
  - (a) The components of the improvement that are eligible for payment pursuant to the grant will be completed; and

(b) The health needs of the community will be met.

**Sec. 23.** NAC 349.564 is hereby amended to read as follows:

**Disbursement of money pursuant to grant. (NRS 349.982)**

1. The recipient of a grant under the program shall:

(a) Submit [~~periodic~~] *quarterly* requests for the disbursement of money pursuant to the grant on forms provided by the Division [~~of Environmental Protection of the Department~~].

(b) Provide the Division with:

(1) Copies of all contracts related to the improvement, including contracts for construction, procurement and the provision of professional services. Any invoice submitted by the recipient of the grant 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.

(2) Proof that any prior disbursements of money pursuant to the grant have been distributed in an appropriate manner and that any disbursements made pursuant to a present request for the disbursement of money pursuant to the grant will be distributed in an appropriate manner.

The proof must consist of:

(I) Copies of [~~the front of~~] cancelled checks issued by the recipient of the grant; or

*(II) Written documentation from a financial institution of wire transfers or other electronic fund transfers initiated by the recipient, or*

~~(H)~~*III*) A signed letter from a vendor stating that the vendor has been paid in full for an invoice that is to be reimbursed by a disbursement made pursuant to the present request for the disbursement.

2. The disbursement of any money pursuant to a grant under the program must comply with the funding agreement. Each payment must be approved based on the actual costs to date.

**Sec. 24.** NAC 349.569 is hereby amended to read as follows:

**Award of credit toward amount of money recipient of grant is required to provide. (NRS 349.982)**

1. The Division [~~of Environmental Protection of the Department~~] may give a recipient of a grant pursuant to the program credit toward the amount of money the recipient is required to provide for the capital improvement pursuant to subsection 3 of NRS 349.983 if the recipient contributes to the capital improvement:

- (a) All of the money the recipient has available for that purpose; and
- (b) Material, labor, equipment or any other contribution approved by the Division other than money.

↳ The credit must not exceed the unpaid balance of the amount the recipient is required to provide pursuant to that subsection.

2. To obtain credit pursuant to subsection 1:

- (a) A recipient of a grant pursuant to the program must submit to the Division:
  - (1) Documentation for each contribution made to the capital improvement by the recipient for material, labor, equipment or other contribution approved by the Division;
  - (2) A postconstruction audit of each contribution made to the capital improvement by the recipient; and
  - (3) Any other information the Division deems appropriate.
- (b) All forms, rates and documentation submitted by the recipient of the grant must be approved by the Division.

3. If the Division approves the credit, the amount of the credit must be determined by the Division based on:

- (a) The prevailing wage for similar classifications of work;
- (b) The rates [~~paid by the Department of Transportation for the rental of equipment~~] *negotiated in a contract with a contractor or supplier that was procured in accordance with NRS 338*; or
- (c) The actual costs sustained by the recipient of the grant.

**Sec. 25.** NAC 349.574 is hereby amended to read as follows:

**Procedure following completion of improvement. (NRS 349.982)**

1. After the recipient of a grant pursuant to the program has completed the improvement, the recipient shall submit to the Division [~~of Environmental Protection of the Department~~] for its approval:

(a) A final engineering report that includes a certificate of completion executed by an engineer indicating that:

- (1) The improvement has been completed in accordance with the provisions of the funding agreement;
- (2) The improvement as constructed has been tested and satisfies the objectives for which it was designed and performs the functions for which it was intended; and
- (3) Based on the results of the test specified in subparagraph (2), the quality of materials and workmanship are consistent with the plans and specifications approved for the improvement;

(b) Drawings of the improvement as constructed that depict any material changes from the initial plans for the improvement;

(c) The dates the improvement was tested, accepted and placed into service;

(d) A statement of the final costs for the improvement; and

(e) If required by the Division, proof that the improvement performs the tasks for which it was designed.

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

3. If the final engineering report, certificate of completion and statement of final costs submitted pursuant to subsection 1 are approved by the Division:

(a) The Division shall release the recipient of the grant from any liability arising pursuant to the funding agreement; and

(b) The recipient of the grant shall discharge the Division and the State of Nevada from any claims or demands arising pursuant to the funding agreement.

4. Upon completion of the requirements of this section and payment of the final request submitted pursuant to subsection 2, any undisbursed amount of the sum authorized for the grant will be made available for other grants pursuant to the program.

**Sec. 26.** NAC 349.480 is hereby repealed.

~~{Procedure following receipt of letter of intent. Upon receipt of a letter of intent, the Division of Environmental Protection of the Department shall:~~

~~(a) Record the date of receipt;~~

~~(b) Maintain a file containing all documents and information pertaining to the financing of the proposed improvement or costs; and~~

~~(c) Promptly forward a copy of the letter of intent to the Bureau or the Water Planning Section of the Division of Water Resources of the Department, as appropriate given the type of improvement or costs proposed in the letter of intent.~~



~~2.—The Division of Environmental Protection of the Department and the entity which received a copy of the letter of intent pursuant to paragraph (c) of subsection 1 shall review the letter of intent and forward their comments to the Board within 30 days after receipt of the letter of intent.~~

~~3.—The Board will consider a letter of intent forwarded from the Division of Environmental Protection of the Department and will, in a motion or resolution adopted by the Board, determine whether:~~

~~(a) If the applicant is a purveyor of water other than the Lincoln County Water District, the community water system or nontransient water system was in existence on January 1, 1995, and is currently publicly owned;~~

~~(b) If the applicant is a conservation district, irrigation district, conservancy district or general improvement district, the applicant was in existence on January 1, 1995;~~

~~(c) The proposed improvements will be publicly owned;~~

~~(d) The applicant is eligible for the program pursuant to NRS 349.981 or 349.983; and~~

~~(e) The proposed improvement is likely to be economically justified and financially feasible pursuant to the provisions of NAC 349.430 to 349.574, inclusive.]~~

**Sec. 27.** NAC 349.485 is hereby repealed.

**[Approval of letter of intent. (NRS 349.982)**

~~1.—The Board will approve the letter of intent in a motion or resolution adopted by the Board if the Board:~~

~~(a) Makes the determinations required pursuant to subsection 3 of NAC 349.480; and~~

~~(b) Finds that the proposed improvement or costs qualify for a grant pursuant to NRS 349.981 or 349.983.~~

~~2.—Upon approval of a letter of intent by the Board, the applicant must file an application for the proposed improvement or costs within 1 year after the date of approval or by a date specified by the Board, except that:~~

~~(a) Upon the request of the applicant and based upon the occurrence of circumstances beyond the control of the applicant, the Division of Environmental Protection of the Department may once authorize the applicant to file the application at a later date, which must not be later than 18 months after the date of approval or 6 months after the date originally specified by the Board; or~~

~~(b) The Board may, upon good cause shown, extend the period for the applicant to file the application.~~

~~3. If the Board has approved a letter of intent, it may request that the Division of Environmental Protection or the Water Planning Section of the Division of Water Resources of the Department, as appropriate and within the limits of their available resources, assist the applicant with preparing an application. The Board may also request the Division of Environmental Protection of the Department to issue a letter evidencing an intent to proceed with the program.~~

~~4. The approval of a letter of intent by the Board does not guarantee or ensure that any proposed improvement or costs will be provided a grant.]~~

**Sec. 28.** NAC 349.490 is hereby repealed.

**~~[Disapproval of letter of intent; finality of decision of Board; reapplication. (NRS 349.982)~~**

~~1. If the Board does not make the affirmative determinations required by subsection 3 of NAC 349.480 or finds that the letter of intent does not meet the requirements of NAC 349.475, the Board will disapprove the letter of intent, by motion or resolution, and promptly notify the Division of Environmental Protection of the Department and the applicant of its decision, listing the reasons for disapproval.~~

~~2. The decision of the Board is final.~~

~~3.—If a letter of intent is disapproved by the Board, the applicant may reapply not less than 6 months after the date of disapproval or at such time as is permitted by the Board, whichever is earlier.]~~

**Sec. 29.** NAC 349.525 is hereby repealed.

~~**[Public meeting on proposed improvement or costs; correction of deficiencies in application. (NRS 349.982)**~~

~~Before approving an application, the Board or its designated representative:~~

- ~~1.—Will hold a public meeting on the proposed improvement or costs and provide reasonable notice to the members of the public who may be affected by the proposed improvement or costs:~~
- ~~2.—May return the application to the applicant for the correction of any deficiencies.]~~