

Nevada

State Agency

The State Environmental Commission (SEC) is an eleven-member body comprised of appointees from the public sector and of statutory designated officials from state departments. It functions in a quasi-judicial and quasi-legislative capacity with the responsibility to hear and decide on promulgating rules and standards for controlling a variety of health and environmental related topics, including water pollution. The SEC's rules are enforced through the Department of Conservation and Natural Resources, Division of Environmental Protection (DEP). The following bureaus are most relevant to BLM:

- Bureau of Water Quality Planning,¹ which oversees the Nonpoint Source Pollution Management Program, performs water quality monitoring, petitions the SEC for setting water quality standards, issues water quality certifications as mandated by the CWA section 401, and develops TMDLs.
- Bureau of Water Pollution Control,² which prepares National Pollutant Discharge Elimination System (NPDES) (including stormwater) and groundwater, as well as enforces compliance of permit conditions.
- Bureau of Mining Regulation and Reclamation, which oversees the design, construction, operation, and closure of mining facilities.

Delegated Permit Authority

Nevada has been delegated permit authority for the NPDES permit program including stormwater permits for all areas except Indian lands. Nevada has not been delegated authority for the section 404 dredge and fill permits. However, the U.S. Army Corps of Engineers (COE) does not issue 404 permits without section 401 certification from the State.

State Definition of Covered Waters

According to Nevada State law, “waters of the state” are “all waters situated wholly or partly within or bordering upon this State, including but not limited to: 1) all streams, lakes, ponds, impounding reservoirs, marshes, water courses, waterways, wells, springs, irrigation systems and drainage systems; and 2) all bodies or accumulations of water, surface and underground, natural or artificial.”³

Water quality standards in Nevada extend to isolated wetlands and non-navigable tributaries. Although isolated wetlands and non-navigable tributaries are included as waters of the state, they do not have specific quantitative standards; rather they are protected under a general “free from pollutants” narrative standard.⁴

¹ Information on the Bureau of Water Quality Planning is available at: <http://ndep.nv.gov/bwqp/bwqp01.htm>.

² Information on the Bureau of Pollution Control is available at: <http://ndep.nv.gov/bwpc/bwpc01.htm>.

³ NRS § 445A.415.

⁴ NAC 445A.121. “The following standards are applicable to all surface waters of the State: 1) Waters must be free from substances attributable to domestic or industrial waste or other controllable sources that will settle to form sludge or bottom deposits in amounts sufficient to be unsightly, putrescent or odorous or in amounts sufficient to interfere with any beneficial use of the water. 2) Waters must be free from floating debris, oil, grease, scum and other floating materials attributable to domestic or industrial waste or other controllable sources in amounts sufficient to be unsightly or in amounts sufficient to interfere with any beneficial use of the water. 3) Waters must be free from materials attributable to domestic or industrial waste or other controllable sources in amounts sufficient to produce taste or odor in the water or detectable off-flavor in the flesh of fish or in amounts sufficient to change

Water quality standards do not extend to groundwater in Nevada, but the State has a policy to protect all groundwater to drinking water standards.⁵

Point Sources and NPDES Permits

The BLM does not hold any NPDES permits in Nevada.

Water Quality Standards

Designated Uses

Nevada’s designated uses are outlined in Figure One. From this list, uses are designated on a site specific basis.

Figure One: Nevada State-Designated Use Descriptions

State-Designated Use Code	State-Designated Use	State-Designated Use Description
AESTH	Waters of Extraordinary Ecological or Aesthetic Value	The unique ecological or aesthetic value of the water must be maintained.
IRR	Irrigation	The water must be suitable for irrigation without treatment.
LW	Watering of Livestock	The water must be suitable for the watering of livestock without treatment.
WQE	Enhancement of Water Quality	The water must support natural enhancement or improvement of water quality in any water which is downstream.
AL	Aquatic Life	The water must be suitable as a habitat for fish and other aquatic life existing in a body of water. This does not preclude the reestablishment of other fish or aquatic life.
MFM	Freshwater Marsh	The water must support the maintenance of freshwater marshes.
WILD	Propagation of Wildlife	The water must be suitable for the propagation of wildlife and waterfowl without treatment.
IND	Industrial Supply	The water must be treatable to provide a quality of water which is suitable for the intended use.
IND-NO_FP	Industrial Supply Except for Food Processing	The water must be treatable to provide a quality of water which is suitable for the intended use, except for food processing purposes.
MUN/DOM	Municipal or Domestic Supply	The water must be capable of being treated by conventional methods of water treatment in order to comply with Nevada's drinking water standards.

the existing color, turbidity or other conditions in the receiving stream to such a degree as to create a public nuisance or in amounts sufficient to interfere with any beneficial use of the water. 4) Waters must be free from high temperature, biocides, organisms pathogenic to human beings, toxic, corrosive or other deleterious substances attributable to domestic or industrial waste or other controllable sources at levels or combinations sufficient to be toxic to human, animal, plant or aquatic life or in amounts sufficient to interfere with any beneficial use of the water.”

⁵ NAC 445A.424. “A [mining] facility, regardless of size or type, may not degrade the waters of the state to the extent that ... [f]or groundwater[,] [t]he quality is lowered below a state or federal regulation prescribing standards for drinking water[.]”

MUN/DOM-DISIN	Municipal or Domestic Supply-- Disinfection Treatment Only	The water must be capable of being treated by disinfection only in order to comply with Nevada's drinking water standards. Disinfection means a process that inactivates pathogenic organisms in water by using chemical oxidants or equivalent agents.
MUN/DOM-DISIN_FILT	Municipal or Domestic Supply-- Disinfection and Filtration Treatment Only	The water must be capable of being treated by disinfection and filtration only in order to comply with Nevada's drinking water standards. Disinfection means a process that inactivates pathogenic organisms in water by using chemical oxidants or equivalent agents. Filtration means a process for removing particulate matter from water by passing the water through porous media.
PCR	Recreation Involving Contact with the Water	There must be no evidence of manmade pollution, floating debris, sludge accumulation, or similar pollutants.
SCR	Recreation Not Involving Contact with the Water	The water must be free from: (1) Visible floating, suspended, or settled solids arising from man's activities; (2) Sludge banks; (3) Slime infestation; (4) Heavy growth of attached plants, blooms, or high concentrations of plankton, discoloration or excessive acidity or alkalinity that leads to corrosion of boats and docks; (5) Surfactants that foam when the water is agitated or aerated; and (6) Excessive water temperatures.

Source: EPA WQSDB available at: http://oaspub.epa.gov/wqsdatabase/wqsi_water_body.rep_parameter

Water Quality Criteria

Both narrative and numeric criteria are included in Nevada's water quality standards. The narrative standards are applicable to all surface waters of the State and, as mentioned above, consist mostly of statements requiring water to be "free from" various pollutants.⁶

Numeric standards for conventional pollutants are broken down into two types: class and water body specific. The class type of criteria for various pollutants are designed to protect the beneficial uses of classes of waters from A to D (with class A being the highest quality). The water bodies belonging to these classes are named in the regulations. For major water bodies in Nevada, site-specific numeric standards have been developed. These water bodies are often referred to as "designated" waters. The standards for designated waters include both criteria designed to protect the beneficial uses and antidegradation requirements.

State law provides that Nevada water quality standards are intended to protect both existing and designated beneficial uses and must not be used to prohibit the appropriation of water.⁷ Nevada does not have streamflow criteria established to regulate flows associated with existing beneficial uses. The State also does not have biological criteria or guidance.

There are several instances in Nevada's regulations where the water quality criteria are defined as a certain level above or below the "natural conditions."⁸ Figure Two outlines these criteria. It is important to note that violations of the natural condition-based standards were not evaluated for impairment status on the 2002 303(d) List, except for fecal coliform and total dissolved solids (TDS).

⁶ *Supra* note 4.

⁷ NAC 445A.122.

⁸ "Natural conditions" are considered to be the water quality characteristics that would exist in a water body without the impacts of modern human development.

Figure Two: Summary of Natural Condition-Based Water Quality Standards

Parameter	Applicable Water Class	Standard
Alkalinity	various designated waters	“less than 25% change from natural conditions”
Color	various designated waters	“Increase in color must not be more than 10PCU above natural conditions.”
Fecal coliform	Class C only	The most stringent of the following applies: 1. The fecal coliform concentration must not exceed a geometric mean of 1000 per 100 milliliters nor may more than 20 percent of total samples exceed 2400 per 100 milliliters. 2. The annual geometric mean of fecal coliform concentration must not exceed that characteristic of natural conditions by more than 200 per 100 milliliter nor may the number of fecal coliform in a single sample exceed that characteristic of natural conditions by more than 400 per 100 milliliter. 3. The fecal coliform concentration, based on a minimum of 5 samples during any 30-day period, must not exceed a geometric mean of 200 per 100 milliliters, nor may more than 10 percent of total samples during any 30-day period exceed 400 per 100 milliliters. This is applicable only to those waters used for primary contact recreation.
Total Dissolved Solids	Class A, B, and C waters	“must not exceed 500 mg/l or one-third above that characteristic of natural conditions (whichever is less).”
Turbidity	various designated waters	“Increase in turbidity must not be more than 10 NTU above natural conditions.”

Source: Nevada’s 2002 303(d) Impaired Waters List, Nevada Division of Environmental Protection Bureau of Water Quality Planning, October 2002.

Sediment

Nevada measures sediment based on total suspended solids (TSS) as well as turbidity. TSS is measured in mg/l and turbidity is measured in NTU.

Antidegradation

Nevada’s Revised Statutes (NRS) 445A.565 contain the State’s antidegradation requirement:

“Any surface waters of the state whose quality is higher than the applicable standards of water quality ... must be maintained in their higher quality. No discharges of waste may be made which will result in lowering the quality of these waters unless it has been demonstrated ... that the lower quality is justifiable because of economic or social considerations. This subsection does not apply to normal agricultural rotation, improvement, or farming practices.”

Nevada’s antidegradation policy is implemented through the establishment of requirements to maintain existing higher quality. A requirement to maintain existing higher quality or RMHQ is established when monitoring data show that existing water quality for individual parameters is significantly better than the standard necessary to protect the beneficial uses. If adequate monitoring data exist, requirements to maintain existing higher quality

(RMHQs) are established at levels which reflect existing conditions. This system of directly linking antidegradation to numeric objectives provides a manageable means for implementing antidegradation through the permit program and other programs.

Nevada has not adopted Outstanding Natural Resource Waters (ONRW) (Tier III) standards. While the State of California has designated Lake Tahoe as an ONRW, Nevada has not. However, Nevada has assigned a beneficial use of “water of extraordinary ecological or aesthetic value” for Lake Tahoe.⁹

ONRWs on BLM land

There are no waters of extraordinary ecological and aesthetic values with the requirement to maintain higher quality on BLM land in Nevada.

State 305(b) Reporting

The National Assessment Database (NAD) contains information on the attainment of water quality standards. Assessed waters are classified as either Fully Supporting, Threatened, or Not Supporting their designated uses. This information is reported in the National Water Quality Inventory Report to Congress under Section 305(b) of the CWA.¹⁰

State 303(d) List and TMDLs

The EPA TMDL Tracking System contains information on all impaired waters under section 303(d) of the CWA. The database also has information on EPA-approved TMDLs.¹¹ As of 1998, the date of the most recent update to the EPA’s tracking system, Nevada reported 37 water bodies on its 303(d) List and had 1 TMDL approved. By 2002, Nevada had 5 TMDLs approved. Nevada’s 2002 303(d) List can be found in appendix A of its 2002 report.¹²

Nevada does not have GIS coverage of impaired water bodies.

303(d) List

Listing and Credible Data Standards

When considering a water body for listing or de-listing, the State considers all existing and readily available water quality-related data and information, such as chemical/physical properties of a water column, sediment, and fish tissue; biological information; toxicity testing results; and narrative and qualitative information.¹³ In general, a water body is listed when there is adequate documentation that beneficial uses are not being supported during a five-year period. A water body is also listed if any of its numeric beneficial use standards are exceeded more than 10% of the time during a five-year period.

Nevada does not have credible data standards when it comes to listing or de-listing a water body. Instead, decisions are based on professional judgment. In general, impaired waters are listed based upon data meeting the following minimum requirements:

⁹ NAC 445A.1905.

¹⁰ Nevada’s attainment of water quality standards can be found at: http://oaspub.epa.gov/waters/w305b_report.state?p_state=NV.

¹¹ Nevada’s 1998 303(d) Lists and approved TMDLs are available at: http://oaspub.epa.gov/waters/state_rept.control?p_state=NV.

¹² Nevada’s 2002 303(d) Impaired Waters List, Nevada Division of Environmental Protection Bureau of Water Quality Planning, October 2002.

¹³ *Id.*

- At least 10 water quality sample analyses are available for the five-year evaluation period.
- There are sufficient numbers of samples to represent conditions in the water body reach during the five-year period. Best professional judgment is utilized to make this determination.
- There is adequate documentation on data development and sampling location.¹⁴

Nevada also has a “List of Water bodies Warranting Further Investigation,” which includes water bodies where there is not sufficient evidence to place them on the 303(d) List, but there is evidence that a problem may exist.¹⁵ TMDLs are not required for these water bodies. The state also has a separate list of “Water bodies Not Meeting RMHQs.”¹⁶ TMDLs are also not required for these water bodies.

De-Listing

As a general rule, in order to de-list a water body, it takes data similar to that used to list it. If the procedures described above are found to indicate a water body is not impaired, the water body will be de-listed. Other reasons to de-list include:

- The standard is no longer exceeded because of a change in the surface water quality standards.
- Faulty data or information or errors in the analysis resulted in a listing error.

The State reserves the right to use data or information that goes beyond the above criteria and to use its best professional judgment. Lack of data is not a justification for delisting a water body.

TMDLs

Major streams in Nevada have had TMDLs established for several years. Figure Three lists the TMDLs that have been established by the State and approved by the EPA. However, only the Truckee River and Las Vegas Wash/Lake Mead TMDLs are based upon significant scientific analysis and modeling efforts. These are the only two TMDLs that include only both point and non-point sources (other TMDLs include only non-point sources). Because of the regulatory nature of point source controls, the implementation of these two TMDLs have been much more successful than other TMDLs.

Nevada has established TMDLs for water bodies impaired by nonpoint sources of pollution and included them in the State management plan. However, compliance with these TMDLs is voluntary, and for this reason, they have not been very effective.

¹⁴ Nevada’s 2002 303(d) Impaired Waters List, Nevada Division of Environmental Protection Bureau of Water Quality Planning, October 2002.

¹⁵ This list is found in Appendix C of Nevada’s 2002 303(d) Impaired Waters List, Nevada Division of Environmental Protection Bureau of Water Quality Planning, October 2002.

¹⁶ This list is found in Appendix B of Nevada’s 2002 303(d) Impaired Waters List, Nevada Division of Environmental Protection Bureau of Water Quality Planning, October 2002.

Figure Three: Summary of Established TMDLs

Basin	Parameters
Carson River	BOD, nitrate, orthophosphates, TDS
Humboldt River	TDS, TP, TSS
Las Vegas Wash/Lake Mead	TP, total ammonia
Virgin River	Boron
Bryant Creek	Arsenic, Iron, Nickel, Turbidity, TSS
Truckee River	TDS, TN, TP
Walker River	TSS

Other TMDL activity in Nevada includes:

- East Fork Owyhee River where the State is finalizing the TMDL for TP, TSS and iron.
- Lake Tahoe, where the State is working with California to develop a TMDL for nutrient loading and fine sediments. It is anticipated that a technical TMDL will be completed by 2005, with subsequent implementation plan development by 2007.

Establishment, Apportionment, and Implementation

As mentioned above, the only two TMDLs being successfully implemented involve point sources. For these TMDLs, the waste load allocation (WLA) was apportioned by agreement between the participating dischargers. Currently there is a pollution trading system in place for the Truckee River and Las Vegas Wash/Lake Mead TMDLs allowing trading between point sources to comply with the TMDL requirement.

The most difficult issue in Nevada's TMDL program is implementing TMDLs on nonpoint sources. As mentioned above, the voluntary nature of controlling nonpoint source pollution prevents TMDL implementation on nonpoint sources from being anything more than voluntary. This has led to little success in TMDLs involving nonpoint sources.

The BLM has been involved in several TMDLs in Nevada. The agency's involvement is typically centered around sediment. For example, the BLM is participating in the implementation plan for a TMDL for total phosphorous on Indian Creek Reservoir. As a land manager with high levels of recreation use adjacent to the reservoir, the BLM is directly involved. The BLM is evaluating options for sediment control since sediment is the main phosphorous input that the BLM can manage.

Water Quality Monitoring

The State of Nevada operates an ambient monitoring program with over 100 fixed monitoring stations in the 14 hydrographic regions.¹⁷ This network was set up to assist in developing and evaluating water quality standards. With the need for TMDLs, the State is evaluating the monitoring program and gearing it towards TMDL development.

In addition to the fixed sampling points, several water quality-intensive field studies are conducted on the major water systems of Nevada (Truckee River, Carson River, Walker River, and the Humboldt River). Beginning in 2000, the State began performing biological assessments of these water systems, collecting macroinvertebrate data. This program is still developing.

¹⁷ A summary of Nevada's Monitoring Program can be found in Appendix E of its 2002 303(d) Impaired Waters List supra note 8.

Nonpoint Source Pollution Program

Nevada uses the term “diffuse source” to be equivalent to the term “nonpoint source” as used in Federal statutes and regulations. Nevada Revised Statutes defines a diffuse source as “any source of water pollution which is diffused to the extent that it is not readily discernible and cannot be confined to a discrete conveyance.”¹⁸ The Administrative Code further defines diffuse source as “1) agricultural activity, including return flows from irrigation; 2) silvicultural activity; 3) mining activity; 4) construction of buildings, roads, dams, utility lines, or other improvement facilities; 5) runoff from roads, streets, and railroads; 6) construction or use of recreational trails; 7) modification of watercourses or stream channels; and 8) runoff from urban areas.”¹⁹

Nevada, through its nonpoint source (NPS) program manages activities and implements projects that prevent or reduce nonpoint source loading. The majority of Nevada’s NPS program is voluntary, relying on public education/outreach, agency collaboration, technology transfer, implementation of Best Management Practices (BMPs), and demonstration projects as mechanisms for reducing nonpoint source pollution. The most recent outline of Nevada’s NPS program was completed in 1999.²⁰

Nevada’s NPS program is implemented on a watershed basis through partnerships. The state uses the establishment and development of Coordinated Resource Management Plans (CRMPs) as a key tool for watershed management. The following watersheds or sub-watersheds have active CRMP groups or other watershed groups working on the assessment of nonpoint source pollution: Truckee River, Steamboat Creek, Lake Tahoe Basin, Carson River, and Las Vegas Wash.²¹

According to NDEP, the success or failure of a voluntary nonpoint source control program depends upon the participation of a multitude of landowners, land management agencies, government agencies, decision makers, and the public. Without buy-in from the various entities, it is difficult to design and implement the necessary nonpoint source control projects.

BMPs

In 1978, Nevada’s Handbook of Best Management Practices was developed. Revised in 1994, this handbook applies to the remediation and elimination of nonpoint sources of pollution throughout the entire State. The 1994 handbook is intended as a general guidance and information resource to assist in reducing or preventing nonpoint source pollution. The handbook does not include design specifications or standards.

The 1994 handbook reflects the sources of NPS pollution identified by Nevada and the U.S. EPA. The handbook is divided into the following twelve chapters: 1) Road and Construction Site Practices; 2) Erosion and Sediment Controls; 3) Soil Stabilization Practices; 4) Slope Stabilization Practices; 5) Infiltration Systems; 6) Watershed Management; 7) Agriculture; 8) Forest Resource Management; 9) Mining; 10) Urban Resource Management; 11) Waste Management; and 12) Miscellaneous. Chapter seven is further broken down into farming and

¹⁸ NRS § 445A.335.

¹⁹ NAC 445A.309.

²⁰ State of Nevada, Nonpoint Source Management Program, Division of Environmental Protection, Bureau of Water Quality Planning, September, 1999.

²¹ Nevada’s Nonpoint Source Management Program 1999 update (see supra note 20) includes descriptions of these watershed management activities as well as those in Walker River and Humboldt River watersheds.

livestock. BMPs for livestock include practices related to planned grazing systems, proper grazing use, range improvements, and livestock facilities.

Implementation on Federal Land

As of 1999, Nevada had formalized memoranda of understanding (MOUs) or memoranda of agreement (MOAs) with the BLM, the U.S. Forest Service, and the National Resource Conservation Service. The MOU with the BLM was updated and expanded in September, 2004.²²

Federal Consistency

The Federal consistency provisions of section 319 of the CWA authorize Nevada to review Federal financial assistance programs and development projects for their effect on water quality. If the State determines that an application or project is not consistent with the State NPS Management Program and notifies the Federal agency of its concerns, the agency must make efforts to accommodate the State's concerns or explain its decision to not make accommodations, in accordance with Executive Order 12372. Additionally, section 313 of the CWA requires federal agencies having jurisdiction over property or facilities, or engaged in activities which may result in water pollution, to comply with State and local water pollution control regulations and authorities to the same extent as any non-governmental entity.

Because approximately 87% of Nevada land is Federally managed, the Federal consistency review process plays a significant role in the effectiveness of the State's NPS management program. Because of staff limitations, reviews are focused on nonpoint source impacts in priority watersheds, especially where section 303(d)-listed waters exist. Review criteria include the potential for an increase in pollutant loading to a water body for which water quality standards are not met. For waters not listed, the review evaluates the potential for increased pollutant loading to the extent that a water quality standard will be violated.

The BLM is responsible for managing nearly 68% of the land within Nevada. Livestock grazing is the most widespread BLM-regulated activity with NPS pollution concerns. In addition to formal review of management plans and permit applications and modifications, the NPS Program works with the BLM in developing rangeland health standards and guidelines for BLM grazing within the state. Additionally, NPS program staff has been trained in the Proper Functioning Condition method for evaluating stream and wetland conditions.

Enforceable State Laws/Policies/Programs to Limit NPS Pollution

Water Pollution Control Laws

Nevada's water pollution control laws include some provisions that apply to nonpoint source discharges. Nevada's Water Pollution Control Act allows the State environmental commission to prescribe controls for those "diffuse sources" that are "significantly causing or adding to water pollution in violation of a water quality standard."²³ The commission may also prescribe controls for new diffuse sources to prevent degradation of high quality waters,²⁴ except

²² Memorandum of Understanding for Water Quality Management Activities Within the State of Nevada Between Nevada Department of Conservation Division of Environmental Protection and U.S. Department of the Interior Bureau of Land Management Nevada. September 2004.

²³ NRS § 445A.335.

²⁴ NRS § 445A.570(1)(b).

with respect to “normal agricultural practices.”²⁵ The act further provides that new or increased diffuse sources must provide measures that are designed to prevent, eliminate, or reduce water pollution from the source and are reasonably consistent with the economic capability of the project or development.²⁶ The act directs the commission to delegate administration of the diffuse sources program to counties and cities that request it and have sufficient resources.²⁷ Special regulations exist to protect the Lake Tahoe watershed. The act makes it illegal to discharge waste within 100 feet of the lake or a stream or other water supply in the Lake Tahoe watershed.²⁸

Fish and Fisheries Laws

Any person who places in or allows to fall into waters of the State “any substance deleterious to fish or wildlife” is guilty of a misdemeanor.²⁹

Operational Requirements

Forestry Requirements

The Nevada forestry statute requires a permit from the State forester for logging or cutting operations, which may be denied if the operation will cause significant soil erosion and siltation.³⁰ The forestry statute also requires a certificate before the conversion of timberland “to any use other than the growing of timber,”³¹ which may be denied for, among other reasons, “[f]ailure to give satisfactory proof that adequate provision will be made to stabilize, revegetate or rehabilitate disturbed soils in order to minimize erosion, flooding or other damage to the watershed.”³² All logging permits and conversion certificates must require the use of best management practices to prevent, eliminate, or reduce pollution from diffuse sources.³³

The forestry statute also prohibits “felling of trees, skidding, rigging, or construction of roads . . . within 200 feet of a water body.”³⁴ However, a variance may be granted if, among other standards, the goal of maintaining water quality standards will not be compromised. It is also illegal to engage in tractor logging on slopes of 30 percent or more without a variance.

Agriculture and Grazing Requirements

Nevada law prohibits grazing in areas into which water is diverted for municipal, drinking, or domestic purposes in the State. Exceptions include prospectors or other persons with ten head of livestock passing over or being temporarily upon such land, livestock running at large upon the range, and persons herding on their own lands.³⁵

²⁵ NRS § 445A.565(1).

²⁶ NRS § 445A.565(2)(b).

²⁷ NRS § 445A.570(2).

²⁸ NRS § 445A.170-190.

²⁹ NRS § 503.430.

³⁰ NRS § 528.042, .044(1)(b)(4).

³¹ NRS § 528.082-.090.

³² NRS § 528.084(2)(d).

³³ NAC 445A.340.

³⁴ NRS § 528.053(1).

³⁵ NRS § 568.330.

A “diffuse source” under Nevada State law includes “agricultural activities” and “return flows from irrigation.”³⁶ Therefore, the enforceable provisions discussed under Water Pollution Control Laws above apply to these sources.

A conservation district may petition the State conservation commission to formulate land use regulations that may include provisions that prevent soil erosion and sedimentation.³⁷ Variances from these provisions may be available from a board of adjustment set up by the commission.

Earth-Disturbing Activities

State law empowers local governments to regulate land improvements and location of structures and to take into account the potential impairment of natural resources.³⁸ Also, zoning regulations must be designed to preserve the quality of water resources.³⁹ Nevada law broadly provides for “areas of critical environmental concern”⁴⁰ and requires preparation of regional land use plans that include goals relating to conservation and protection of water and other natural resources.⁴¹

Wetlands and § 404 Permits

Since Nevada has not been delegated authority for the section 404 dredge and fill permit program, the COE has the primary responsibility for protecting wetlands in Nevada. Beyond the COE 404 program, Nevada does not have additional laws, policies, or programs for wetland.

Stormwater Provisions

The State of Nevada is the stormwater permitting authority for all lands in Nevada, including BLM land, except for Indian country. Construction activity disturbing at least one acre requires a General Permit for Stormwater Discharge Associated with Construction Activity (permit number NVR 100000).⁴² In Indian country within the state of Nevada, the EPA is the permitting authority and requires the submission of permit number NVR10000I. The stormwater NPDES permit requirements can be waived for small construction sites (greater than one acre, but less than 5 acres) if the value of the rainfall erosivity factor is less than 5 during the period of construction activity.

The General Permit for Stormwater Discharge Associated with Construction Activity requires the applicant to submit a Notice of Intent⁴³ and a filing fee (currently \$200). A Stormwater Pollution Prevention Plan (SWPPP) also must be prepared and a Notice of Termination⁴⁴ must be submitted upon completion of the project. The SWPPP must include project information, BMPs, inspection and maintenance, a description of non-stormwater

³⁶ NAC 445A.309.

³⁷ NRS § 548.410.

³⁸ NRS § 278.020.

³⁹ NRS § 278.250(2).

⁴⁰ NRS § 321.655(2) defines “area of critical environmental concern” to mean “any area in this state where there is or could develop irreversible degradation of more than local significance by does not include an area of depleting water supply which is caused by the beneficial use or storage of water in other areas pursuant to legally owned and fully appropriated water rights.” *See also* NRS §§ 321.710, .755, .770.

⁴¹ NRS § 278.0274(2).

⁴² Available at: <http://ndep.nv.gov/bwpc/conperm02.pdf>.

⁴³ Available at: <http://ndep.nv.gov/bwpc/ConstructionNOI/signin.aspx>.

⁴⁴ Available at: <http://ndep.nv.gov/bwpc/indnot.pdf>.

discharges, and a description of permanent stormwater controls that will be built as part of the project.⁴⁵ The Notice of Termination must indicate that “final stabilization” has been achieved.⁴⁶

⁴⁵ A full description of these components of the SWPPP can be found at <http://ndep.nv.gov/bwpc/conperm02.pdf>.

⁴⁶ “Final Stabilization” means “[a]ll soil disturbing activities at the site have been completed and a uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures have been employed.” See <http://ndep.nv.gov/bwpc/conperm02.pdf>.