

## Item 7 Capital Improvements Grant Regulations (Discussion)

### Reason for updates and changes

- 1) Assembly Bill 20 (82<sup>nd</sup> Session) makes various changes to NRS 349
  - a. Transfer the program to the Department of Conservation and Natural Resources
  - b. State Environmental Commission to adopt regulations relating to the financing of water projects.
  - c. Expands eligible recipients for wellhead abandonment and septic-to-sewer conversions.
- 2) Senate Bill 150 (80th Session) makes various changes to NRS 349
  - a. Adds Governing body and water resource plans as an eligible entity and project.
- 3) Improved flow of process for application and award of funds.
- 4) Incorporate 13 Board Policies into the regulations.
- 5) Housekeeping

<b>1</b>	<b>Definitions</b>	<b>NAC 349.430-349.471</b>
<b>Summary</b> <p>The Nevada Administrative Code (NAC) definitions are generally correct and current, but not complete with recent statutory changes. Two separate types of systems are eligible for grant funding: (1) purveyors of water and (2) eligible recipients.</p> <b>Proposed changes</b> <ul style="list-style-type: none"><li>• Define the program as the Capital Improvements Grant Program.</li><li>• Define a third type of system that is eligible for funding: governing body.</li><li>• Define Division, Water Resource Plan, Authorized Representative, and Fiscal Sustainability Plan</li><li>• Correct references from State Board of Health to Division of Environmental Protection (NDEP) and applicable statutory references.</li></ul>		
<b>2</b>	<b>Program eligibility, filing of letter of intent, and application</b>	<b>NAC 349.475-349.530</b>
<b>Summary</b> <p>The NAC outlines the conditions in which the Board for Financing Water Projects (Board) will award a grant from the program, the requirement to file a letter of intent, and filing a loan application.</p> <ul style="list-style-type: none"><li>• Current conditions for which the Board would provide a grant for a purveyor of water and eligible recipient.</li><li>• Applicant completes a letter of intent to the Board.</li><li>• The Board hears the letter of intent and approves or denies the letter of intent.</li><li>• Applicants can only apply to the program once the letter of intent is approved.</li><li>• Application is presented to the Board for approval.</li></ul> <b>Proposed changes</b> <ul style="list-style-type: none"><li>• Separate the recipient types into subsections that identify what each recipient type must do to receive funding. Establish requirements for those recipient types to obtain a grant.</li></ul>		

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<ul style="list-style-type: none"> <li>○ Purveyor of water</li> <li>○ Eligible recipient</li> <li>○ Governing body</li> <li>• Incorporates funding nonprofit public water systems into program eligibility</li> <li>• Updates the letter of intent content and process: <ul style="list-style-type: none"> <li>○ Directs the letter of intent to be sent to NDEP.</li> <li>○ Updates the contents and submission requirements for the letter of intent.</li> <li>○ NDEP to assess the applicant's ability to apply to the Board for funding.</li> <li>○ Updates for the Board policy on sufficient user rates</li> <li>○ Updates for the Board policy on fiscal sustainability plans</li> <li>○ Updates for the Board policy on capital replacement reserves.</li> <li>○ Updates for the Board policy on water meters</li> <li>○ Updates for the Board policy on alternative funding</li> <li>○ Process to petition the Board if the applicant disagrees with NDEP's determination.</li> </ul> </li> <li>• Updates the loan application content and process: <ul style="list-style-type: none"> <li>○ Updates for the Board policy on construction, engineering, and contingency</li> <li>○ Housekeeping updates the contents and submission requirements for the application.</li> <li>○ NDEP evaluates the application and presents the application to the Board or approval of grant funding.</li> <li>○ Updates the information presented to the Board for approval.</li> <li>○ Approval or disapproval of loan application by the Board.</li> </ul> </li> </ul>		
<b>3</b>	<b>Determination to provide grant, action by the Board; amount of the grant; duties of the Division</b>	<b>NAC 349.535</b>
<p><b>Summary</b></p> <p>NAC outlines the requirements for the contents of the Board resolution, when the Board may approve an application, determine the grant amount using a scale, and directs the applicant to comply with any conditions imposed by the Board.</p> <p><b>Proposed changes</b></p> <ul style="list-style-type: none"> <li>• Update the regulations for the Board policy on the scale to determine grant amount for purveyors of water, eligible recipients, and governing bodies.</li> <li>• Adds in requirements to maintain sufficient user rates, develop and maintain a fiscal sustainability plan or asset management plan, and fund a capital replacement reserve account.</li> <li>• Incorporating the use of the program for septic-to-sewer system connections and nonprofits into the Boards determination</li> </ul>		
<b>4</b>	<b>Bonding</b>	<b>NAC 349.540</b>
<p><b>Summary</b></p> <p>NAC instructs NDEP on the request to issue general obligation bonds from the State Treasurer's Office to support the program.</p>		

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### Proposed changes

- Adds, “upon approved legislation.”

### 5 Administrative Fee and funding agreement

NAC 349.549

#### Summary

NAC outlines the amount the recipient shall pay to NDEP as an administrative fee and the contents of the funding agreement.

#### Proposed changes

- Changes the administrative fee:
  - Applicant is obtaining funding from the DWSRF or CWSRF program in partnership with the grant: 0.25% of the grant amount.
  - Applicant is not obtaining funding from the DWSRF or CWSRF program in partnership with the grant: 0.5% of the grant amount.
  - Fee is payable in installments over 12 months. NDEP to negotiate the installment arrangement with the applicant. Any default in payment of fees results in a hold of grant funds.
  - Requires NDEP to maintain 5 years of administrative funds, evaluation of the administrative fee, and use of bond proceeds for administration per the board policy on administrative funding.
- Funding agreement not more than 3 years, with the possibility of 1 extension that is approved by the Board.
- Updates to the funding agreement deemed necessary by the Attorney General’s office and NDEP.

### 6 Recipient Responsibilities

NAC 349.554-349.574

#### Summary

NAC outlines the duties a recipient must follow in receiving a grant, including but not limited to: bidding, construction, draw requests, credit towards recipient portion of project funding, and completion of the project.

#### Proposed changes

- Require a public procurement process for soliciting and bidding contracts to show open and fair competition, regardless of the legal structure of the applicant.
- Documentation accepted for proof of payments on draws.
- Housekeeping

**GRANTS FOR WATER CONSERVATION AND IMPROVEMENTS TO CERTAIN WATER SYSTEMS  
AND SEWAGE DISPOSAL SYSTEMS**

**NAC 349.430 Definitions.** ([NRS 349.982](#)) As used in [NAC 349.430](#) to [349.574](#), inclusive, unless the context otherwise requires, the words and terms defined in [NAC 349.432](#) to [349.469](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.432 “Account for the Revolving Fund” defined.** ([NRS 349.982](#)) “Account for the Revolving Fund” has the meaning ascribed to it in [NRS 445A.203](#).

(Added to NAC by Bd. for Financing Water Projects by R104-04, eff. 9-18-2006)

**NAC 349.435 “Board” defined.** ([NRS 349.982](#)) “Board” means the Board for Financing Water Projects created pursuant to [NRS 349.957](#).

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91)

**NAC 349.440 “Bureau” defined.** ([NRS 349.982](#)) “Bureau” means the Bureau of Safe Drinking Water of the Division of Environmental Protection of the Department.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R104-04, 9-18-2006)

**NAC 349.443 “Community sewage disposal system” defined.** ([NRS 349.982](#)) “Community sewage disposal system” has the meaning ascribed to it in [NRS 349.980](#).

(Added to NAC by Bd. for Financing Water Projects by R104-04, eff. 9-18-2006)

**NAC 349.445 “Community water system” defined.** ([NRS 349.982](#)) “Community water system” has the meaning ascribed to it in [NRS 349.980](#).

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R104-04, 9-18-2006)

**NAC 349.450 “Department” defined.** ([NRS 349.982](#)) “Department” means the State Department of Conservation and Natural Resources.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91)

**NAC 349.455 “Director” defined.** ([NRS 349.982](#)) “Director” means the Director of the Department.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91)

**NAC 349.458 “Eligible recipient” defined.** ([NRS 349.982](#)) “Eligible recipient” means a political subdivision of this State, including, without limitation, a city, county, unincorporated town, water authority, conservation district, irrigation district, water district, water conservancy district or general improvement district.

(Added to NAC by Bd. for Financing Water Projects by R104-04, eff. 9-18-2006)

**NAC 349.461 “Fund” defined.** ([NRS 349.982](#)) “Fund” means the fund created pursuant to [NRS 349.984](#).

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.4615 “Individual sewage disposal system” defined.** ([NRS 349.982](#)) “Individual sewage disposal system” has the meaning ascribed to it in [NRS 349.980](#).

(Added to NAC by Bd. for Financing Water Projects by R104-04, eff. 9-18-2006)

**NAC 349.462 “Irrigation district” defined.** ([NRS 349.982](#)) “Irrigation district” has the meaning ascribed to it in [NRS 539.013](#).

(Added to NAC by Bd. for Financing Water Projects by R104-04, eff. 9-18-2006)

**NAC 349.463 “Nontransient water system” defined.** ([NRS 349.982](#)) “Nontransient water system” has the meaning ascribed to it in [NRS 349.980](#).

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98)

**NAC 349.464 “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 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.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.465 “Public water system” defined.** ([NRS 349.982](#)) “Public water system” has the meaning ascribed to it in [NRS 445A.840](#).

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91)

**NAC 349.466 “Purveyor of water” defined.** ([NRS 349.982](#)) “Purveyor of water” has the meaning ascribed to it in [NRS 349.980](#).

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98)

**NAC 349.467 “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 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.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98)

**NAC 349.469 “Viable” defined. ([NRS 349.982](#))** “Viable” means:

1. For a purveyor of water, having the financial, managerial and technical ability to sustain over a long term the operation of a community water system or nontransient water system and to remain in compliance with the requirements for public water systems; and
2. For eligible recipients, having the financial, managerial and technical ability to remain in compliance with applicable federal, state and local requirements for the system for which the application for the grant was made.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.471 “Costs traditionally associated with capital improvements” interpreted. ([NRS 349.982](#))** For the purposes of [NRS 349.980](#), the Board interprets “costs traditionally associated with capital improvements” to include:

1. The costs to carry out any feasible and appropriate changes in operations necessary for a purveyor of water to become viable, including, without limitation, changes in ownership, management, accounting, rates, maintenance, consolidation and alternative supplies of water; and
2. Any costs that are not directly related to the actual construction of the capital improvement, including, without limitation, costs:
  - (a) For engineering, design, construction, legal and financial services;
  - (b) Incurred in obtaining a loan from the Account for the Revolving Fund; and
  - (c) For acquisition of water rights, easements and rights-of-way.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.475 Eligibility for grant; filing of letter of intent. ([NRS 349.982](#))**

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

- (a) The grant will assist:
  - (1) The purveyor of water in constructing a capital improvement to the community water system or nontransient water system that will directly enable the purveyor of water to comply with the requirements for public water systems; or
  - (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) 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;
- (c) The purveyor of water is currently included on the priority list for the Account for the Revolving Fund; and

(d) 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. To apply for a grant, a purveyor of water or eligible recipient must file with the Board a letter of intent. The letter must include:

(a) The name, 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 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, the location and a brief description of the proposed improvement, including maps or 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 for which the application for a grant was made.

(e) A preliminary estimate of the cost of the proposed improvement or costs associated with connecting to a municipal water system or community sewage disposal system, including, without limitation, the cost of construction, engineering, contingencies and any additional costs necessary for financing the improvement.

(f) A description of future improvements planned by the applicant, 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 in complying with the requirements for public water systems or the eligible recipient in carrying out the purpose of the proposed improvement.

(h) Documentation 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, including, but not limited to:

(1) Letters from local lending institutions;

(2) Letters from financial advisers, accountants or fiscal agents, if applicable;

(3) Copies of any applications for funding the proposed improvement 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;

(II) The fund described in [NAC 445A.728](#); or

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

(4) 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) 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) 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.480 Procedure following receipt of letter of intent. ([NRS 349.982](#))**

1. 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.485 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.490 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R104-04, 9-18-2006)

**NAC 349.495 Application: Submission. ([NRS 349.982](#))**

1. If a letter of intent for a proposed improvement or proposed costs is approved, an applicant must submit an original and eight copies of an application to the Board.

2. An application submitted pursuant to subsection 1 must be:

(a) 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](#).

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.500 Application: Required items and information; waiver of requirements. ([NRS 349.982](#))**

1. Except as otherwise provided in subsections 2 and 3, the application must include the following items and information:

(a) A preliminary engineering report for the construction, operation and maintenance of the proposed improvement, 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) A complete and legible legal description of the entire area of service for the proposed improvement, including 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.

(c) 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;
- (2) The rights to the water;
- (3) The quality of the water going into the proposed improvement;
- (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;
- (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.

(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) The estimated cost of operation and maintenance for the proposed improvement.

(l) 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.

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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.505 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. 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. 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;

(b) Current and anticipated debt service; and

(c) Current and future expenses of operation and maintenance.

3. If applicable, evaluate the charge for water that customers of the community water system or nontransient water 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; and

(b) Periodically replacing components of the community water system or nontransient water system that are functionally obsolete or worn out.

4. If applicable, determine whether any exceptional circumstances exist in the area served by the community water system or nontransient water system.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.510 Review of application and feasibility reports; incomplete application; reports to Board. ([NRS 349.982](#))**

1. Within 20 working days after receipt of an application, 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, 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 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 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.

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. The Division of Environmental Protection of the Department shall ensure that:

(a) It receives information concerning the review of the application by the Bureau 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;

(b) A summary of the economic justification for and financial feasibility of the proposed improvement;

(c) The status of the funding available to the applicant for the proposed improvement 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;

(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](#);

(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](#).

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.515 Receipt of permits or authority to proceed required; exceptions; determination of sufficient water rights. ([NRS 349.982](#))**

1. 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. 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.520 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R104-04, 9-18-2006)

**NAC 349.525 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R104-04, 9-18-2006)

**NAC 349.530 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 is economically justified and financially feasible.

- (b) The proposed improvement complies with the provisions of [NRS 349.980](#) to [349.987](#), inclusive.

- (c) The plan for development of the proposed improvement is satisfactory.

- (d) The applicant is able to obtain the financing required to complete the proposed improvement.

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

- (f) The proposed improvement will not use or waste excessive quantities of water.

2. If the Board determines pursuant to paragraph (a) of subsection 1 that the proposed improvement is not economically justified and financially feasible, the Board will, based on the records and documents submitted to the Board concerning the proposed improvement, determine whether the construction of the proposed improvement 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 into compliance with any applicable federal, state or local laws with which the eligible recipient 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 taking into consideration the determinations made pursuant to subsections 1 and 2. If the Board approves the proposed improvement or costs, 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. The Board may give precedence to improvements which provide maximum benefits to the State.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.535 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](#);

(b) The application; 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 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 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;

(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.

3. The Board will send a copy of the resolution to the Division of Environmental Protection of the Department.

4. Within 10 days after 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 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) Directs the applicant to submit any supporting documentation required by the Division; and

(5) 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.540 Request for issuance of general obligation bonds. ([NRS 349.982](#))**

Upon receipt of a resolution of the Board approving the improvement or costs, 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.

(Added to NAC by Bd. for Financing Water Projects, eff. 12-24-91; A by R113-96, 1-23-98; R104-04, 9-18-2006)

**NAC 349.549 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 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 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 years.

(b) Set forth the maximum amount disburseable 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.

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

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.554 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.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.559 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;
- (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.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.564 Disbursement of money pursuant to grant. ([NRS 349.982](#))**

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

(a) Submit periodic 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) 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.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.569 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; or

(c) The actual costs sustained by the recipient of the grant.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)

**NAC 349.574 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.

(Added to NAC by Bd. for Financing Water Projects by R113-96, eff. 1-23-98; A by R104-04, 9-18-2006)