



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

AUG 7 2011

OFFICE OF THE  
REGIONAL ADMINISTRATOR

Ms. Colleen Cripps  
Administrator  
Nevada Division of Environmental Protection  
901 South Stewart Street, Suite 4001  
Carson City, Nevada 89701

Dear Ms. Cripps:

We have received submittals from both the Nevada Division of Environmental Protection (NDEP) and the California State Water Resources Control Board (State Board) of the Total Maximum Daily Loads (TMDL) for listed water quality impairments in Lake Tahoe. Based on EPA's review of NDEP's TMDL submittal under the Clean Water Act (CWA) Section 303(d), EPA finds the TMDL adequately addresses the pollutants of concern and upon implementation will lead to the attainment of the applicable water quality standards for Lake Tahoe in Nevada and California. All required elements are adequately addressed; therefore, the TMDL submitted by NDEP for Lake Tahoe is hereby approved pursuant to CWA Section 303(d)(2). EPA is also approving the State Board's TMDL for Lake Tahoe via a separate letter to the State Board.

EPA received from NDEP a complete TMDL package for approval on August 10, 2011. NDEP adopted the TMDL to address the clarity impairment in Lake Tahoe as identified in the State's 2006 CWA Section 303(d) list. The TMDL includes load and wasteload allocations as needed, takes into consideration seasonal variations and critical conditions, and provides an adequate margin of safety. The State has provided adequate opportunities for public review and comment and demonstrated how public comments were considered in the final TMDL.

The TMDL submittals also contain detailed plans for implementation. EPA has reviewed the plans and that review has informed EPA's understanding and approval of the TMDL. However, EPA does not act upon the implementation plans themselves.

NDEP formally submitted the TMDL to EPA on August 3, 2011. Subsequently, NDEP submitted revisions to the TMDL to EPA on August 10. We are including an enclosure to this letter clarifying how the TMDL program is conducted under the CWA.

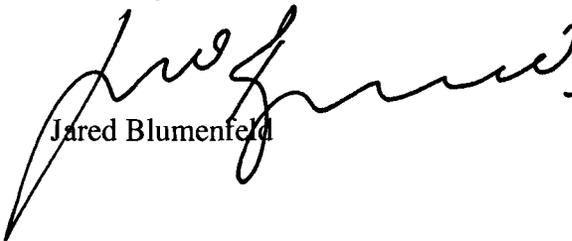
We recognize that TMDL implementation is already underway, and that it involves highly innovative and rigorous approaches to both tracking and accounting of pollutant load reductions as well as on-the-ground techniques for achieving water quality improvements. We strongly encourage the State to continue its collaboration with responsible parties and affected stakeholders to implement these strategies. EPA will continue to stay actively involved and supportive of this effort. EPA intends to participate in the development of the Memoranda of Agreement between NDEP, Washoe and Douglas counties, and the Nevada Department of Transportation to implement strategies to control urban and stormwater runoff. We urge NDEP to remain both substantively and temporally consistent with the

multi-state implementation actions described in the TMDL to assure consistent progress toward restoration of Lake Tahoe's water quality.

We appreciate the dedication and collaboration of your staff at NDEP, especially Kathy Sertic and Jason Kuchnicki, in developing this complex and challenging TMDL. Their commitment to partnerships and working with local stakeholders were very apparent at the May 20<sup>th</sup> TMDL listening session where they received much praise for their efforts.

I look forward to continuing this collaborative work as we implement these TMDLs to achieve full restoration of Lake Tahoe's renowned clarity. If you have any questions concerning this approval, please contact Alexis Strauss, Director, Water Division, at (415) 972-3572, or Jacques Landy, Lake Tahoe Basin Coordinator, at (775) 589-5248.

Sincerely,



Jared Blumenfeld

Enclosure

cc: Tom Howard, Executive Director, State Water Resources Control Board  
Harold Singer, Executive Officer, Lahontan Regional Water Quality Control Board

## ENCLOSURE

1. The Nevada TMDL, at Tables 10-1, 10-2, and 10.3 correctly assigns wasteload allocations to the Nevada Department of Transportation. Pursuant to 40 CFR Section 122.44(d) (1) (vii) (B), the permitting authority “shall ensure” that effluent limitations are consistent with the assumptions and requirements of “any available [approved] wasteload allocation...” EPA does not read any part of the August 2011 Final TMDL Report as being inconsistent with this clear regulatory requirement.

2. NDEP’s transmittal letter states that “NDEP ... will ... evaluate whether load allocations, milestones and/or implementation strategies and actions need to be adjusted ... in a collaborative manner to the extent possible; however, NDEP reserves the right and authority to make independent decisions if it deems necessary.” Although EPA agrees with the general intent of this statement, we read it as being within the context of the Clean Water Act. That is, Nevada may choose to reevaluate this approved TMDL, but that evaluation must meet the public review requirements of the TMDL program, and any changes to the TMDL must be submitted to EPA for review and approval. *See generally* CWA Section 303(d)(2) and the regulations thereunder.

3. We note that the final edit of the Final TMDL Report (August 2011) removed a brief discussion sentence in Section 10.3 about the future revisions to TMDL. The previous version included a sentence noting that “[a]t any point in the future, a nonpoint source (i.e., load allocation) may be designated a point source (waste load allocation) without cause to reopen this TMDL.” EPA believes the previously included sentence is a correct statement of the TMDL program. If, in fact, future regulatory programs (under the stormwater program, for example) designate additional point sources, the allocation attributable to such point sources will become “wasteload allocations” without requiring a formal revision to the TMDL.

4. The Final TMDL Report (August 2011) added language about the need to evaluate the TMDL in light of current stressed economic conditions. EPA believes that concern about economic conditions is certainly timely, but notes that the process for when and how economic considerations are evaluated is clear under the CWA regulations. The TMDLs themselves are technical computations only; they are developed with a goal of meeting water quality standards. Economic considerations come into play in designating uses for a water body and in evaluating implementation strategies.