



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

FEB 01 2013

Mr. John Heggeness  
Supervisor, Water Quality Standards and Monitoring  
Bureau of Water Quality Planning  
Nevada Division of Environmental Protection  
901 South Stewart Street, Suite 4001  
Carson City, Nevada 89701

Dear Mr. Heggeness:

Thank you for submitting Nevada's 2008-10 Water Quality Integrated Report and supporting documentation pursuant to Clean Water Act (CWA) Sections 303(d) and 305(b). We received the submittal on December 11, 2012. I am pleased that EPA can approve Nevada's determination to identify each of the waters and pollutants that the State included in its list of waters requiring a total maximum daily load (TMDL) under CWA Section 303(d); however, the U.S. Environmental Protection Agency (EPA) finds that the State omitted from that list several waters and associated pollutants which meet federal listing requirements. EPA is therefore acting today to partially approve and partially disapprove the State's submittal.

EPA carefully reviewed the final submittal including the State's listing decisions, assessment methodology, and supporting data and information. EPA finds that Nevada's 2008-2010 list of water quality limited segments requiring TMDLs partially meets the requirements of Section 303(d) of the Clean Water Act and EPA's implementing regulations. Accordingly, pursuant to 40 CFR 130.7(d), EPA hereby approves each of the State's listings of water quality limited segments requiring a TMDL identified in the 2008-2010 Integrated Report, Attachment 4, Category 5 Waters.

During our review, we also identified several waters and associated pollutants that meet federal listing requirements but were not included in Nevada's 2008-2010 Integrated Report, Attachment 4, Category 5 Waters list. Accordingly, EPA is today identifying the waters and associated pollutants listed in Table 1 of the enclosure as waters requiring a TMDL pursuant to 40 CFR 130.7(d)(2). The statutory and regulatory requirements, a summary of our review of Nevada's compliance with applicable requirements, and our rationale for adding the waters and pollutants identified in Table 1 are also described in the enclosure.

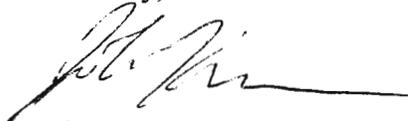
We appreciate your inclusion of prioritization of water quality limited segments requiring TMDL development, as identified in Attachment 4 of the 2008-2010 Integrated Report. We understand these schedules to serve the purpose of priority rankings required by 40 CFR 130.7(b). We are not taking action on these schedules as federal regulations do not require EPA to act upon TMDL schedules or priority rankings; however, we expect the prioritization will guide the State's future TMDL development efforts.

The public participation process provided by Nevada Division of Environmental Protection included several opportunities for the public to participate or submit written comments. The State's public participation activities were consistent with federal requirements.

EPA will solicit public comments on the additions to the State's 303(d) list identified in Table 1 of the enclosure. We will provide a responsiveness summary for comments received on these additions and will advise if any revision to EPA's determination is found to be appropriate.

If you have questions concerning this decision, please call me at (213) 244-1832, or Susan Keydel at (415) 972-3106.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Kemmerer', with a long horizontal flourish extending to the right.

John Kemmerer  
Acting Director, Water Division

Enclosure

cc: Colleen Cripps, Ph.D., Administrator, NDEP  
Dave Gaskin, P.E., Deputy Administrator, NDEP  
Kathy Sertic, Chief, Bureau of Water Quality Planning, NDEP

## **Enclosure:**

### **EPA Review of Nevada's 2008-2010 Section 303(d) List Submitted December 2012**

Date of Transmittal Letter from State: December 6, 2012

Date of Receipt by EPA: December 11, 2010

Date of Receipt by EPA of Additional Information Requested: January 13, 2013

#### **Purpose**

The purpose of this document is to describe the rationale for EPA's partial approval and partial disapproval of Nevada's 2008-2010 list of water quality limited segments requiring a Total Maximum Daily Load (TMDL) under Clean Water Act, Section 303(d)<sup>1</sup>. The following sections identify those key elements to be included in the list submittal based on the Clean Water Act and EPA regulations (see 40 CFR 130.7). EPA carefully reviewed the State's submittal including the listing decisions, the assessment methodology used by the State in developing its list, and supporting data and information. EPA's review of Nevada's list is based on EPA's analysis of whether the State reasonably considered existing and readily available water quality-related data and information, and reasonably identified waters required to be listed. This review describes the basis for EPA's decision to approve the State's listings of water quality limited segments requiring a TMDL identified in the State's 2008-2010 Integrated Report, Attachment 4 ("Category 5 Waters (303(d) List)"). This review also describes the basis for EPA's decision to disapprove Nevada's decision to not include certain waters and pollutants on its list of water quality limited segments requiring a TMDL. EPA's determination to add waters and/or pollutants is based on monitoring results and information in the State's administrative record, as well as additional material cited in the References section at the end of this document.

As discussed further below, EPA will open a public comment period on the additions to Nevada's Section 303(d) List, and will, if appropriate, revise the list of added waters and pollutants following consideration of any comments received. The general basis for adding individual waters and pollutants are discussed here and case-specific water body information is provided in Table 1 of this enclosure.

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<sup>1</sup> Nevada included listing determinations for both the 2008 and the 2010 periods in this Integrated Report submitted pursuant to Clean Water Act, section 303(d) and 305(b), in lieu of completing a list of water quality limited segments requiring a TMDL in 2008. EPA therefore considers that the Nevada 2008-2010 list and supporting determinations included in the State's 2008-2010 Water Quality Integrated Report satisfy CWA requirements for both the 2008 and 2010 assessments of water quality limited segments requiring a TMDL.

## **Statutory and Regulatory Background**

### Identification of Water Quality Limited Segments for Inclusion on a Section 303(d) List

Section 303(d)(1) of the Clean Water Act directs States to identify those waters within its jurisdiction for which effluent limitations required by Section 301(b)(1)(A) and (B) are not stringent enough to implement any applicable water quality standard, and to establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters. The Section 303(d) listing requirement applies to waters impaired by point and/or nonpoint sources, pursuant to EPA's long-standing interpretation of Section 303(d).

EPA regulations provide that States do not need to list waters where the following controls are adequate to implement applicable standards: (1) technology-based effluent limitations required by the Clean Water Act, (2) more stringent effluent limitations required by federal, State or local authority, and (3) other pollution control requirements required by State, local, or federal authority. See 40 CFR 130.7(b)(1).

### Consideration of Existing and Readily Available Water Quality-Related Data and Information

In developing its list of water quality limited segments requiring a TMDL, a State is required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 CFR 130.7(b)(5). In addition to these minimum categories, States are required to evaluate any other water quality-related data and information that is existing and readily available. EPA's 1991 Guidance for Water Quality-Based Decisions describes categories of water quality-related data and information that may be existing and readily available (see, EPA 1991, Appendix C). While States are required to evaluate all existing and readily available water quality-related data and information, States may decide to rely or not rely on particular data or information in determining whether to list particular waters.

In addition to requiring States to assemble and evaluate all existing and readily available water quality-related data and information, EPA regulations at 40 CFR 130.7(b)(6) require States to include as part of their submittal to EPA documentation to support decisions to use or not use particular data and information and decisions to list or not list waters. Such documentation needs to include, at a minimum, the following information: (1) a description of the methodology used to develop the list; (2) a description of the data and information used to identify waters; and (3) any other reasonable information requested by the Region.

### Priority Ranking

EPA regulations also address the requirement in Section 303(d)(1)(A) of the Act that States establish a priority ranking for listed waters. The regulations at 40 CFR 130.7(b)(4) require States to prioritize waters on their Section 303(d) lists for TMDL development, and also to identify those water quality limited segments targeted for TMDL development in the next two years. In prioritizing and targeting waters, States must, at a minimum, take into account the severity of the pollution and the uses to be made of such waters. See Section 303(d)(1)(A). As long as these factors are taken into account, the Clean Water Act provides that States establish priorities. States may consider other factors relevant to prioritizing waters for TMDL development, including immediate programmatic needs, vulnerability of particular waters as aquatic habitats, recreational, economic, and aesthetic importance of particular waters, degree of public interest and support, and State or national policies and priorities. See 57 FR 33040, 33045 (July 24, 1992), and EPA 1991.

### **Analysis of Nevada's Submittal**

#### Identification of Waters and Consideration of Existing and Readily Available Water Quality-Related Data and Information

EPA has reviewed the State's submittal, and has concluded that the State developed its list of water quality limited segments requiring a TMDL in partial compliance with Section 303(d) of the Act and 40 CFR 130.7. EPA's review is based on its analysis of whether the State reasonably considered existing and readily available water quality-related data and information and reasonably identified waters required to be listed.

Nevada used its 2006 Section 303(d) List and 305(b) Report as its starting point, and based its 2008-2010 Section 303(d) submittal on its analysis of readily available data and information to determine whether additions to or deletions from the 2006 list were necessary. Many waters were retained on the 2008-2010 Section 303(d) List.

The State made significant efforts to clarify the geographic extent of waterbody segments between the 2006 Section 303(d) List and 305(b) Report and the 2008-2010 Water Quality Integrated Report. (See 2008-2010 Water Quality Integrated Report, Attachment 1.) Waterbody reach changes address several issues, including removing reaches on tribal lands, and segmenting and size corrections based on GIS geometry or water quality monitoring data.

Additionally, the State has created a web map application to display assessment data and results addressed in the 2008-2010 Integrated Report<sup>2</sup>. This Nevada 2008-10 Integrated Report Web Map Application was assembled to make publically available information about the waterbodies and sample locations assessed in the Nevada 2008-10 Integrated Report

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<sup>2</sup> Link to Nevada 2008-10 Integrated Report Web Map Application , as of January 30, 2013:  
<http://ndep.nv.gov/bwqp/gis/webmap2010.htm>

EPA concludes that the incremental listing approach is consistent with federal requirements because the State is making the environmentally conservative assumption that, absent more recent data or information supporting a different finding, previously listed waters are water quality limited segments. Further, we commend the State for work to refine listing segments and waterbody reaches, and for assessing more waters than in prior listing decisions.

#### Assembly of Data and Information

The State devoted considerable effort to assembling new data and information for the 2008-2010 Water Quality Integrated Report and development of the 303(d) list. Staff compiled data and information from multiple sources, including each of the data and information categories identified at 40 CFR 130.7(b)(5). Nevada's Division of Environmental Protection (NDEP) staff actively sought data from available websites, agencies and groups likely to have data. The State issued public notice soliciting data and information from the public on September 15, 2009, with submittals requested by November 15, 2009. Additionally, the solicitation notice was emailed to an extensive emailing list, and posted on the NDEP website. In response to this public call for data, 33 entities submitted information and data. (See 2008-2010 Water Quality Integrated Report, pgs 12-13.) Overall, the State considered data and information submitted during the comment period including: fish advisories; USEPA databases; existing and readily available water quality data and information reported by local, State and federal agencies, citizen groups, academic institutions and the public; and other sources of data and information that were readily available to staff. EPA finds the State's approach assembling readily available information to be reasonable.

The State's assembling of data resulted in a significant increase in available data from that of previous assessments. (See 2008-2010 Water Quality Integrated Report, Attachment 2, Assessment Sampling Stations.) The State generally focused on data collected over a 7-year period, between October 1, 2002 and September 30, 2009. In some cases, the State considered older data as part of its 2008-2010 listing assessments, depending upon the pollutants at issue, the types of data, and the availability of more recent data and information. EPA finds it reasonable for the State to base its assessments on water quality data generally collected during the 2002-2009 timeframe because the more recent ambient water quality data are more likely to be representative and indicative of current water quality conditions. EPA also finds it is reasonable for the State to consider some data (e.g., sediment and tissue data) that are older in age because these media usually are longer-term indicators of chemical contamination than ambient water column data, and provide reliable information for assessing water quality conditions for a longer period of time.

EPA's review found the data compilation process was sufficiently clear and consistent with federal listing requirements, and a sufficient basis for water body assessments.

### Listing Methodology

The submittal summarizes the listing methodology used by Nevada to develop the 2008-2010 Water Quality Integrated Report and 303(d) list, and specifies explicit factors for making listing and delisting decisions for different pollutant types based on different kinds of data.

In general, NDEP includes a waterbody in Category 5 based on adequate documentation showing that water quality standards contained in the Nevada Administrative Code 445A.070 – 445A.2324, or the Code of Federal Regulations (40 CFR 131.36) adopted for Nevada by EPA were not being met during the period October 1, 2002 through September 30, 2009. NDEP also included a waterbody in Category 5 where a health advisory for fish consumption had been issued by the State Division of Health, and/or the waterbody is included as part of a National Priorities List (Superfund) site (e.g., due to mercury contamination from historic mining activities). If sufficient data were not available to make a use support evaluation, an attainment determination of “Insufficient Information” (Category 3) was made. (See 2008-2010 Water Quality Integrated Report, Attachments 3a and 3b, Waterbody Assessment Results).

The 2008-2010 Water Quality Integrated Report includes assessment methodologies and quantitative assessment factors including statistical methods for evaluating potential standard exceedance, minimum data set requirements, and data quality requirements. These decision factors are applied to various types of data, including water chemistry, bacteria, nutrients, nuisance factors, water and sediment toxicity.

Nevada's 2008-2010 Water Quality Integrated Report includes a list of water segments where a water quality standard is not met or expected to be met, but an impairment is being addressed by a USEPA approved TMDL. (See 2008-2010 Water Quality Integrated Report, Attachment 6, Approved TMDL List.) EPA understands this list to include water segments and pollutant pairs which the State has identified as impaired but is not requiring a new or revised TMDL at this time.

The State used the assessment decision factors as the basis for the majority of its 2008-2010 listing decisions. EPA reviewed the various assessments and concludes the State's assessments are consistent with federal listing requirements and applicable water quality standards in almost all cases. EPA, relying on federal listing regulations and guidance, has determined that some waters and/or pollutants that meet the Federal listing requirements under 40 CFR 130.7 were omitted from the State's list of water quality limited segments requiring a TMDL. The basis for EPA's decisions to add several waters/pollutants is discussed in greater detail in the following section.

### **Basis for EPA Decision to Add Waters To Nevada's 2008-2010 303(d) List**

This section describes the basis for EPA's decisions to (1) disapprove the State's decision to not list several water bodies and associated pollutants, and (2) add these water bodies and associated pollutants to Nevada's 2008-2010 Section 303(d) List. EPA analyzed the State's water body assessments and supporting rationales to determine whether the State's decisions not to list

waters were consistent with federal listing requirements and the provisions of state water quality standards. The State is required to evaluate potential violations of both narrative and numeric water quality objectives. See 40 CFR 130.7(b)(3).

When determining whether to add waters to Nevada's Section 303(d) List, EPA first considered provisions within State water quality standards and, if necessary, referred to listing criteria contained in EPA's water quality assessment guidance documents (EPA 2001, 2003, 2005, 2006, 2009).

#### A. Fish Tissue impaired for mercury

Nevada's 2008-2010 Water Quality Integrated Report identified 19 water body segments as impaired for "mercury in fish tissue" because fish consumption advisories were in effect for these waterbody during the listing period. In Nevada, the Division of Health (NDH) is responsible for issuing fish consumption advisories based on mercury fish tissue data collected by the Nevada Department of Wildlife (NDOW). In January 2006, NDH issued fish consumption advisories for the Carson River from Dayton to Lahontan Dam and all waters in the Lahontan Valley, Big and Little Washoe Lakes, Rye Patch Reservoir, Chimney Dam Reservoir, and Comins Lake. NDEP has determined that fish consumption is a non-supporting use only for those waters that have a fish consumption advisory issued by NDH. The 2008-2010 Water Quality Integrated Report states: "Fish consumption is not a beneficial use cited in NAC 445A.120, although, it is protected through the narrative standards, 445A.121:

*(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..." (See 2008-2010 Water Quality Integrated Report, pg 25.)*

NDH advisories are based on the U.S. Food and Drug Administration (FDA) fish tissue mercury action level of 1.0 mg methyl mercury<sup>3</sup> /kg wet weight fish tissue, developed for human consumption of commercial fish. This 1979 FDA action level defines the extent of contamination at which FDA may regard food as adulterated and represents the limit at or above which FDA may take legal action to remove products from the marketplace.

"FDA based its action level on the lowest level at which adverse effects were found to occur in adults... FDA toxicologists are developing a more complete database for addressing low-level methyl mercury exposures from fish; however they consider the 1 ppm limit to provide an adequate margin of safety. This doesn't mean that it is safe to regularly and frequently eat fish that contain 1 ppm methyl mercury. The limit was established taking into consideration the types of fish people eat, the level of methyl mercury present in each species, and the amounts of fish that are normally consumed." (FDA, 1995)

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<sup>3</sup> Inorganic mercury can be absorbed by aquatic organisms but is generally taken up at a slower rate and with lower efficiency than is methyl mercury.

In January 2001, EPA published its recommended CWA section 304(a) water quality criterion for methyl mercury, expressed as a fish tissue concentration value, and set at 0.3 milligram methyl mercury per kilogram of wet-weight fish tissue, or 0.3 mg/kg. This criterion represents the concentration of methyl mercury in freshwater and estuarine fish and shellfish tissue that should not be exceeded to protect consumers of fish and shellfish among the general population. EPA recommends that states, territories, and authorized tribes use the criterion in establishing or updating water quality standards for waters of the United States and in issuing fish and shellfish consumption advisories. States and authorized tribes remain free not to use EPA's current recommendations, provided that their water quality criteria for methyl mercury protect the designated uses and are based on a scientifically defensible methodology, considering bioaccumulation and local or statewide fish consumption. (EPA 2010). EPA's methyl mercury criterion of 0.3 mg methyl mercury/kg in fish tissue is based on a total fish and shellfish consumption-weighted rate of 17.5 gm fish/day.<sup>4</sup> Under CWA section 303(c), states and authorized tribes must adopt water quality criteria that protect designated uses. Section 303(c)(1) provides that states and authorized tribes review their water quality standards every three years and modify and adopt water quality standards as appropriate.

Nevada has not adopted EPA's recommended criterion of 0.3 mg methyl mercury/kg fish tissue. Based on EPA's review of available data, for several waterbodies the arithmetic average mercury concentrations in a given game fish (as defined by NAC 503.060), wiper and/or carp<sup>5</sup> exceed EPA's criterion of 0.3 mg methyl mercury/kg in fish tissue, and thus at least one use is impaired, meeting the federal listing requirements under 40 CFR 130.7. Therefore, EPA is adding the water body pollutant combinations identified in Table 1 to the list of water quality limited segments requiring a TMDL. These waters represent waters where fishing or shellfish do not support the "fishable" goals of the CWA (40 CFR 130.10(D)(6)).

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<sup>4</sup> Based on available data, human exposures to methyl mercury are predominantly from freshwater/estuarine and marine fish. Estimated exposure from ambient water, drinking water, nonfish dietary foods, air, and soil are all, on average, at least several orders of magnitude less than those from freshwater/estuarine fish intakes. However, ingestion of marine fish is a significant contributor to total methyl mercury exposure.

<sup>5</sup> NDOW's web pages on fishing, including the "Where to Fish" web page, include wiper and carp in its list of waters with species-specific consumption advisories.

Table 1: Water bodies added by EPA to Nevada's 2008-2010 Section 303(d) List due to Mercury in Fish Tissue

| <b>Water Body Name</b>                   | <b>Waterbody ID</b> | <b>EPA Assessment Summary</b>  |
|--|---------------------|--|
| Jakes Creek Reservoir                    | NV03-SR-53_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Largemouth bass.  |
| Overland Lake – Ruby Mountains           | NV10-CE-76_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Brook Trout   |
| Owyhee River East Fork – Upper           | NV03-OW-18          | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Yellow Perch.   |
| Owyhee River South Fork                  | NV03-OW-27          | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Smallmouth Bass   |
| Wildhorse Reservoir                      | NV03-OW-25-B        | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Smallmouth Bass, Channel Catfish, Yellow Perch, Wiper, and Tui Chub                         |
| Ruby Lake NWR                            | NV10-CE-26-B        | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Largemouth Bass; and Rainbow Trout had an average concentration of 0.3 (n=5).               |
| Warm Spring Pond – Independence Valley   | NV10-CE-87_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Bluegill Sunfish and Largemouth Bass.   |
| Barth Pit – Near Humboldt River          | NV04-HR-03_01       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Bluegill Sunfish, Smallmouth Bass, and Green Sunfish.                                       |
| Humboldt River                           | NV04-HR-02_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Smallmouth Bass and Sunfish, as well as Fathead Minnow, Lahontan Redside, and Tahoe Sucker. |
| Humboldt River above Rye Patch Reservoir | NV04-HR-05_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Common Carp.  |
| Humboldt River below Rye Patch Reservoir | NV04-HR-06_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Common Carp.  |
| South Fork Reservoir                     | NV04-SF-82_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Smallmouth Bass and Tui Chub  |

| <b>Water Body Name</b>  | <b>Waterbody ID</b> | <b>EPA Assessment Summary</b>   |
|---|---------------------|---|
| Echo Canyon Reservoir<br>(Echo Valley Reservoir)                          | NV13-CL-25-C_00     | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Largemouth Bass.   |
| Nesbitt Lake  | NV13-CL-21-C_00     | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Largemouth Bass.   |
| Bodie Creek   | NV09-WR-21_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Rainbow Trout.   |
| Carson River from Mexican Ditch<br>Gage to New Empire                     | NV08-CR-09_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Green Sunfish.   |
| Little Humboldt River – North Fork  | NV04-LH-46-B_00     | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Brown Trout.   |
| Rough Creek   | NV09-WR-19_00       | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Rainbow Trout, Mountain Sucker, Tahoe Sucker, and Speckled Dace. |
| Walker River East (includes the Elbow,<br>Racoon Beach and Rosachi Ranch) | NV09-WR-07          | Average concentration exceeded 0.3 mg methyl mercury/kg fish tissue in Rainbow Trout.   |

### **Good Cause for Delisting**

Nevada's 2008-2010 Water Quality Integrated Report identified 176 water body-pollutant combinations that were not included on the Section 303(d) List because analysis of available monitoring data supported a conclusion that applicable standards were no longer exceeded. See 2008-2010 Integrated Report, pg 29 and Attachment 5, Delisted Waters. EPA reviewed Nevada's rationale for its decision not to include on its 2008-2010 Section 303(d) List waters that were included on its 2004-2006 Section 303(d) List.

Nevada also identified 100 water body-pollutant combinations for which TMDLs have been developed to address water quality impairments; these are identified as Category 4a waters, and thus are not included on the 2008-2010 303(d) list of Category 5 waters. See 2008-2010 Water Quality Integrated Report, Attachment 6, "EPA Approved TMDL List".

The State demonstrated to EPA's satisfaction good cause for not listing each of these groups of waters. See, 40 CFR 130.7(b)(6)(iv).

### **Public Comments**

NDEP sought public input at several points in the process of developing the 2008-2010 Water Quality Integrated Report, including:

- Public solicitation for data, beginning September 15, 2009 and continuing through November 15, 2009.
- Solicitation for public comments on Nevada's Draft 2008-2010 Water Quality Integrated Report, via e-mail broadcasts and a public notice published March 16, 2012 with comments accepted through April 27, 2012.

Public comments received on the Draft 2008-2010 Water Quality Integrated Report, and NDEP's responses to comments, are provided on the NDEP web page<sup>6</sup>. EPA reviewed the State's responses to comments received on the Draft 2008-2010 Water Quality Integrated Report. EPA found the State's responses to public comments reasonable and in accordance with federal listing requirements.

### **Priority Ranking /Scheduling**

The State's submittal includes a priority ranking for TMDL completion for those waters requiring a TMDL, using a low/medium/high scale. See 2008-2010 Water Quality Integrated Report, Attachment 4, Category 5 Waters. We find that these priority rankings for TMDL development meet requirements related to priority setting in 40 CFR 130.7(b). TMDL development priorities were not set for waters and pollutants for which TMDLs have been completed or that are being addressed through other control actions. EPA concludes that the decision not to identify priority rankings for these waters and pollutants is appropriate. EPA is not taking action on these priorities as federal regulations do not require EPA approval of

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<sup>6</sup> <http://ndep.nv.gov/bwqp/303dlist2010.htm>

priority rankings or schedules.

### **Administrative Record Supporting This Action**

In support of this decision to partially approve and partially disapprove Nevada's listing decisions, EPA carefully reviewed the materials submitted by Nevada with its listing decisions. The administrative record supporting EPA's decision to approve the State's inclusion of the waters and pollutants identified on the State's 2008-2010 Water Quality Integrated Report, Attachment 4, Category 5 List, and to add certain waters and/or pollutants includes the materials submitted by the State, EPA guidance concerning preparation of Section 303(d) lists, EPA's past comments on Nevada's listing methodology and draft lists, and EPA's decision letter and this enclosure. EPA determined that the materials provided by the State with its submittal generally provided sufficient documentation to support our analysis and findings that the State decisions to list waters meet the requirements of the Clean Water Act and associated federal regulations. We are aware that the State compiled and considered additional materials (e.g. raw data and water quality analysis reports) as part of its list development process that were not included in the materials submitted to EPA. EPA did not consider all of these additional materials as part of its review. It was unnecessary for EPA to consider all of the materials considered by the State in order to determine that, based on the materials submitted to EPA, the State complied with the applicable federal listing requirements. Moreover, federal regulations do not require the State to submit all data and information considered as part of the submittal. At EPA's request, the State did provide additional materials on case-specific basis for our review of the raw data and other relevant information. EPA's decisions to add certain waters and/or pollutants to the State's Section 303(d) List is supported by the monitoring data and information available within the State's administrative record and additional material cited in References.

## **References**

### Submittal

Nevada Division of Environmental Protection, 2012. Transmittal of the 2008-2010 Water Quality Integrated Report. Letter to Susan Keydel, USEPA and supporting materials, including the Integrated Report, and responsiveness summary, dated December 6, 2012.

### Other Documents

40 CFR Part 130 Water Quality Planning and Management.

EPA 1978. December 28, 1978 Federal Register Notice, Total Maximum Daily Loads Under Clean Water Act, finalizing EPA's identification of pollutants suitable for TMDL calculations, 43 Fed. Reg. 60662.

EPA 1985. January 11, 1985 Federal Register Notice, 40 CFR Parts 35 and 130, Water Quality Planning and Management: Final Rule, 50 Fed. Reg. 1774.

EPA 1991. Guidance for Water Quality Based Decisions: The TMDL Process. EPA 440/4-91-001 U.S. Environmental Protection Agency, Office of Water, Washington, DC.

EPA, 2001. 2002 Integrated Water Quality Monitoring and Assessment Report Guidance, Robert H. Wayland III, Director, Office of Wetlands, Oceans and Watersheds, November 19, 2001.

EPA. 2001. Water Quality Criterion for the Protection of Human Health: Methylmercury. Final. EPA-823-R-01-001. January 2001

EPA, 2003. Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act; TMDL-01-03, Diane Regas, Director, Office of Wetlands, Oceans and Watersheds, July 21, 2003.

EPA, 2005. Guidance for 2006 Assessment, Listing, and Reporting Requirements Pursuant to Sections 303(d), 305(b), and 314 of the Clean Water Act. Diane Regas, Director, Office of Wetlands, Oceans and Watersheds, July 29, 2005.

EPA, 2006. Information Concerning 2008 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions. Diane Regas, Director, Office of Wetlands, Oceans and Watersheds, October 12, 2006.

EPA, 2009. Information Concerning 2010 Clean Water Act Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions. Suzanne Schwartz, Director, Office of Wetlands, Oceans and Watersheds, May 5, 2009.

EPA. 2010. Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion. EPA 823-R-10-001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

FDA. 1995. FDA Fact Sheet "Mercury in Fish: Cause For Concern?" Revised May 1995.  
Available at: [http://www.fda.gov/OHRMS/DOCKETS/ac/02/briefing/3872\\_Advisory%207.pdf](http://www.fda.gov/OHRMS/DOCKETS/ac/02/briefing/3872_Advisory%207.pdf)