



STATE OF NEVADA

Department of Conservation & Natural Resources
DIVISION OF ENVIRONMENTAL PROTECTION

Brian Sandoval, Governor
Leo M. Drozdoff, P.E., Director
Colleen Cripps, Ph.D., Administrator

September 8, 2014

Jane Diamond
Director, Water Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105-3901

RE: EPA's Proposed Action to Add Topaz Lake to Nevada's 2012 303(d) List

Dear Ms. Diamond,

On August 4, 2014, the U.S. Environmental Protection Agency (EPA) notified the Nevada Division of Environmental Protection (NDEP) of EPA's intent to add Topaz Lake to Nevada's 2012 303(d) List of Impaired Waters for mercury in fish tissue. EPA's decision is based on comparison of Topaz Lake fish tissue data to the EPA recommended criterion of 0.3 mg methyl mercury/kg.

NDEP strongly opposes EPA's proposed action. Nevada has not adopted the EPA recommended fish tissue criterion and NDEP is not required to use the recommended criterion to determine waterbody impairment.

Nevada's 2012 Integrated Report as submitted to EPA in April 2014 meets all federal 303(d) listing requirements contained in 40 CFR 130.7. NDEP's 2012 303(d) List waters were determined by evaluation of State adopted and EPA approved numeric water quality standards established under section 303 of the Clean Water Act. Additionally, NDEP used health advisories issued by the Nevada State Health Division (NSHD) and Superfund designations to evaluate the narrative "free from" standards contained in Nevada Administrative Code 445A.121 to determine if waterbody uses were being met. The NSHD fish consumption advisories are based on the U.S. Food and Drug Administration fish tissue mercury action level of 1.0 mg methyl mercury/kg. NSHD has not issued a health advisory for Topaz Lake because the fish tissue concentrations of mercury are less than 1.0 mg/kg, and therefore NDEP did not include Topaz Lake on the 2012 303(d) List.

Nevada is under no legal obligation to use the EPA recommended criterion for listing purposes. The methyl mercury fish tissue criterion Fact Sheet (January 2001) states: 'EPA's recommended human health water quality criteria are not regulation themselves, and do not impose legally binding requirements.' Further, EPA indicates the water quality criteria recommendations are intended as guidance to States in developing water quality standards (Federal Register Notice January 8, 2001). Nevada (or EPA acting for Nevada) has not officially adopted fish tissue criteria and EPA has no authority to impose the recommended criterion on Nevada.

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As demonstrated above, NDEP has met all applicable listing requirements. EPA should not add Topaz Lake to Nevada's 2012 303(d) List.

Please contact me at (775) 687-9302 if you would like to further discuss this matter.

Sincerely,


David Gaskin, P.E.
Deputy Administrator

cc: Colleen Cripps, Ph.D., Administrator
Kathy Sertic, Bureau Water Quality Planning
John Heggeness, Bureau of Water Quality Planning