



June 19, 2015

Mike Baughman, Ph.D., Executive Director  
Humboldt River Basin Water Authority  
P.O. Box 2008  
Carson City, NV 89702

RE: Comments on Aspects of Nevada's Surface Water Quality Standards That NDEP Should Consider for Potential Revision

Dear Dr. Baughman,

Thank you for the March 27, 2015 letter in response to the Nevada Division of Environmental Protection (NDEP) 2015 water quality standards triennial review. The Humboldt River Basin Water Authority (HRBWA) raises concerns regarding (1) the municipal and domestic supply beneficial use designation for waters in the Humboldt River Basin; (2) aquatic life temperature standards; (3) incorporating a flow component into water quality standards; and (4) the assumption that the Humboldt River and its tributaries are waters of the U.S. The enclosure to this letter provides NDEP's response to the HRBWA comment letter.

Please contact me at (775) 687-9449 if you have any questions.

Sincerely,

John O. Heggeness, Supervisor  
Water Quality Standards and Monitoring Branch  
Bureau of Water Quality Planning

Enclosure: HRBWA March 27, 2015 letter to NDEP

Humboldt River Basin Water Authority  
c/o Intertech Services Corporation  
P.O. Box 2008  
Carson City, NV 89702

Elko County  
Eureka County  
Humboldt County  
Lander County  
Pershing County

March 27, 2015

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

SENT VIA EMAIL TO: [jheggene@ndep.nv.gov](mailto:jheggene@ndep.nv.gov)

RE: Comments on Aspects of Nevada's Surface Water Quality Standards That NDEP Should Consider for Potential Revision

Dear Mr. Heggeness:

On behalf of the five-county Humboldt River Basin Water Authority (HRBWA) I am pleased to provide the following comments on aspects of Nevada's Surface Water Quality Standards which the Nevada Division of Environmental Protection (NDEP) should consider for potential revision. You will recognize some of the following comments as representing recurring concerns which have been raised previously by HRBWA. The Authority would ask NDEP to give serious consideration to addressing these recurring concerns as it undertakes its triennial review of Nevada surface water quality standards. Issues which HRBWA believe should be addressed by NDEP include:

- I. A comprehensive re-evaluation of the designated beneficial uses throughout the Humboldt River system is needed. HRBWA is convinced that many of the designated beneficial uses are inappropriate and do not fairly represent historic, existing and potential uses; desired potential uses or public concerns. In many cases, inappropriate designated beneficial uses have resulted in inappropriately rigorous water quality standards being applied to manage water quality for said inappropriate beneficial use. Of particular concern is the presumption of many segments of the Humboldt River and/or its tributaries being used for municipal or domestic supply, or both. For most, if not all, of the Humboldt River and its tributaries this is simply not the case, .has not been the case, nor is this use of said surface water contemplated now or in the foreseeable future. Until such time as there is a realistic demonstrated need or plan for use of the Humboldt River and/or its tributaries for municipal or domestic supply these surface water segments should not be managed to maintain water quality consistent with municipal or domestic use, or both. HRBWA understands that reevaluation of the Humboldt River and its tributaries for the purpose of reconsidering the appropriateness of Municipal as a designated beneficial use is time consuming and difficult. However, that is not a reason why

NDEP should not seek to correct this mis-designation of surface water use within the Humboldt River system.

**NDEP Response:** NDEP acknowledges that the Humboldt River is not currently used as a direct municipal drinking water source. However, designated beneficial uses are not determined solely by consideration of existing uses. Designated uses cover the possibility that the river or its tributaries may be used as a drinking water supply in the future. This is consistent with Nevada statutes and regulations and is an integral part of the State's efforts to protect limited surface and groundwater resources for current and future uses.

2. HRBWA understands that NDEP is already undertaking work to re-evaluate its temperature standards as they apply to surface water quality within the Humboldt River Basin. The Authority commends this action by NDEP. The Authority would encourage NDEP to suspend further listing of stream segments as impaired based upon non-compliance with existing temperature standards until such time as the review and possible revision of said temperature standards is completed.

**NDEP Response:** NDEP has initiated a technical workgroup of fisheries biologists from a variety of agencies including U.S. Fish and Wildlife, U.S. Bureau of Reclamation, U.S. Geological Survey, Nevada Department of Wildlife, Desert Research Institute, University of Nevada and Southern Nevada Water Authority to develop technical guidance that lays a scientific foundation for revising temperature standards across the State. Until the time that the standards are changed NDEP must use the existing standards that are in the Nevada Administrative Code (NAC) for assessment and 303(d) listing purposes. NDEP cannot suspend listings on waters that are not currently meeting those standards.

3. HRBWA believes the scientific evidence supports greater frequency and duration of drought for the Humboldt River Basin in the future. In addition, higher temperatures in the future will result in a lower percentage of precipitation following as snow in the higher elevations of the Basin. These factors will combine to significantly alter the base flows of the Humboldt River and its tributaries. Resulting reduced flows, and in many cases seasonal no flow, will render maintenance of drought impacted stream segments for existing water quality standards more difficult if not impossible for certain existing water quality standards. It is suggested that NDEP seek to adapt its water quality standards to account for climate induced changes in Humboldt River system flow patterns.

**NDEP Response:** Water quality standards are set to protect the designated beneficial uses of the waterbody. As provided in NAC 445A.121(8), the standards don't apply during extreme high or low flow conditions. NDEP uses the USGS 7Q10 flow statistics as thresholds when evaluating water quality data for 303(d) listing purposes.

4. HRBWA has expressed its concern with the assumption made by NDEP that the entire Humboldt River and its tributaries are waters of the U.S. for purposes of evaluation and possible 303(d) listing. In fact, only one formal designation of jurisdiction has been made by the Corps of Engineers on the system and this is for Rye Patch Reservoir at its upstream confluence with the Humboldt River. No other formal determinations of jurisdiction have been made by the Corps for any other segment of the Humboldt River and its tributaries. Consequently, while under the Corps Tributary Rule the Corps might presume that the balance of the Humboldt River and its tributaries is jurisdictional as a Water of the U.S., the Corps itself has not actually made any such determinations. The fact that NDEP also assumes that the entire Humboldt River and its tributaries are jurisdictional and Water of the U.S. for purposes of water quality evaluation and possible listing as impaired under the 303(d) process does not serve the public interest and welfare of Nevada and her citizens. To the contrary, this assumption made by NDEP has and continues to result in hundreds of miles of stream segments and other water bodies within the Humboldt River Basin being listed as "impaired". Through its assumption of jurisdiction as Waters of the U.S., NDEP is needlessly causing the stigmatization of many high quality and publicly important stream segments and water bodies. NDEP's assumption and the resultant growing list of 303(d) listed stream segments and water bodies within the Humboldt River Basin and elsewhere in Nevada is harmful to the State and her citizens in that it invites legal challenges to the inaction by NDEP to establish TMDLs on said stream segments and water bodies. Successful legal challenges would result in adverse fiscal impact to the State from costs to develop and implement said TMDLs and economic impacts from the higher level of management standard which would result from establishment of said TMDLs. It is simply not in Nevada's best interest for NDEP to continue to assume that the entire Humboldt River and its tributaries are Waters of the U.S. for purposes of water quality evaluation and 303(d) listing. NDEP is encouraged to end the use of said assumption.

**NDEP Response:** The U.S. Army Corps of Engineers (Corps) has determined that Humboldt River Basin contains both jurisdictional and non-jurisdictional waters. The Humboldt River in Elko (see SPK\_2013-00923-SG Elko Regional Athletic Complex) and Maggie Creek, a tributary to the Humboldt River, (See SPK-2013-00403 Newmont Great Gold Quarry Project) have been determined jurisdictional waters. Other ephemeral streams in the Humboldt Basin have been determined non-jurisdictional including creeks near the Twin Creeks Mine (see SPK 1995-25145) and several streams in Boulder Valley (See SPK-2000-25139).

For purposes of Clean Water Act Sections 303(d) and 305(b) reporting NDEP does not evaluate waters determined to be non-jurisdictional by the Corps. For example NDEP did not include Boulder, Bell, Brush and Rodeo Creeks in the 2012 Integrated Report based on Corps jurisdictional determinations.

Your consideration of these comments and suggestions is greatly appreciated.

Sincerely,  
Mike Baughman, Ph.D  
Executive Director (775) 315-2544  
[mikebaughman@charter.net](mailto:mikebaughman@charter.net)