



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

March 6, 2013

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

RE: EPA's Action to Add Waters to Nevada's 2008-10 303(d) List

Dear Mr. Kemmerer,

The Nevada Division of Environmental Protection (NDEP) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) action to add waters to Nevada's 2008-10 303(d) List.

NDEP submitted Nevada's final 2008-10 Water Quality Integrated Report (IR) to EPA on December 11, 2012. On February 1, 2013, EPA partially approved and partially disapproved Nevada's 2008-10 IR.

EPA approved Nevada's listings of water quality limited segments requiring a total maximum daily load identified in Attachment 4, Category 5 (303(d) List), but disapproved NDEP's omission of nineteen waters. Based on review of fish tissue data compared to EPA's 2001 "*recommended*" criterion of 0.3 mg methyl mercury/kg, EPA is taking action to add the following waters to Nevada's 303(d) List: Jakes Creek Reservoir; Overland Lake; Upper East Fork Owyhee River; South Fork Owyhee River; Wildhorse Reservoir; Ruby Lake; Warm Springs Pond; Barth Pit; Humboldt River; Humboldt River above Rye Patch; Humboldt River below Rye Patch; South Fork Reservoir; Echo Canyon Reservoir; Nesbitt Lake; Bodie Creek; Carson River from Mexican Dam to New Empire; North Fork Little Humboldt River; Rough Creek; and East Walker River.

NDEP strongly opposes EPA's action. Nevada's 2008-10 IR as submitted to EPA in December 2012 meets all federal 303(d) listing requirements contained in 40 CFR 130.7. NDEP's 303(d) List waters were determined by evaluation of State adopted and EPA approved water quality standards established under section 303 of the Clean Water Act and other considerations including health advisories issued by the Nevada State Health Division (NSHD) and Superfund designations. 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, not the EPA criterion of 0.3 mg methyl mercury/kg.

NDEP is under no legal obligation to use the EPA "*recommended*" criterion. 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,

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2001). As Nevada (or EPA acting for Nevada) has not officially adopted a fish tissue criteria, EPA has no authority to impose the “recommended” criteria on Nevada.

Nevada’s 2008-10 303(d) List meets all federal listing requirements. It is not appropriate for EPA to add waters to Nevada’s 303(d) List based on the 2001 criterion.

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