



April 28, 2016

Mr. Tomás Torres  
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 Waters to Nevada's 303(d) List

Dear Mr. Torres,

I am writing to express strong opposition to the U.S. Environmental Protection Agency's (EPA) proposed addition of the North Fork of the Little Humboldt River and the South Fork of the Humboldt River to Nevada's 2014 303(d) List. EPA's action is based on comparison of the fish tissue data for these waterbodies to the EPA *recommended* criterion of 0.3 mg methyl mercury/kg. However, Nevada has not adopted the criterion and is not required to use it to determine waterbody impairment.

Nevada's 2014 Integrated Report, as submitted to EPA in December 2015, meets all federal 303(d) listing requirements contained in 40 CFR 130.7. NDEP's 2014 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. NSHD has not issued a health advisory for the North Fork of the Little Humboldt River and the South Fork of the Humboldt River and therefore NDEP did not include these waters on the 2014 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). As Nevada (or EPA acting for Nevada) has not officially adopted fish tissue criteria, EPA has no authority to impose the recommended criteria on Nevada.

Please contact me at (775) 687-9301 if you would like to further discuss this matter.

Sincerely,

David Emme,  
Administrator

Cc: Jennifer Carr, P.E., CPM, CEM, Deputy Administrator  
Kathy Sertic, Chief, Bureau Water Quality Planning  
John Heggeness, Supervisor, Bureau of Water Quality Planning