



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
75 Hawthorne Street  
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Doug Smith, Chief  
TMDL/Basin Planning Unit  
Lahontan Regional Water Quality Control Board  
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Jason Kuchnicki  
Lake Tahoe Watershed Program Manager  
Nevada Division of Environmental Protection  
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Dear Mr. Smith and Mr. Kuchnicki,

Thank you for the opportunity to provide comments on the public notice draft of the Lake Tahoe Total Maximum Daily Load (TMDL) and the associated proposed amendments to the Water Quality Control Plan for the Lahontan Region. EPA has strongly supported this TMDL and appreciates the tremendous effort and substantial dedication of resources that has gone into its development. We have the following comments but wish to emphasize EPA's great interest in expeditious TMDL adoption and implementation.

General

The draft final Lake Tahoe Total Maximum Daily Load Technical Report ("Report") synthesizes a vast amount of information obtained during almost a decade of research and development. EPA applauds the authors for presenting the results of this enormous undertaking in a clear and accessible form.

Specific

1. There is a disparity between Tables 8-3, 9-1, and 10-3 of the Report concerning the percent total phosphorus load reduction required to meet the Clarity Challenge (14% in Table 8-3 and 17% in the other two tables).
2. There is a discrepancy in the text of the Report and of the Proposed Water Quality Control Plan Amendments ("Basin Plan Amendments," July 2010) concerning load

allocations (LAs) and wasteload allocations (WLAs). Tables 10-1 through 10-3 refer to “Load Allocations” but include urban upland allocations (some of which are WLAs), as well as allocations for the other primary source categories (forest upland, atmosphere, and stream channel, which are properly considered LAs). Section 10.3 refers to wasteload allocations applying to urban stormwater dischargers in the first paragraph, but uses the term “load allocations” in the second paragraph. Similarly, Section 11.3.1 refers to “load allocation milestones” being used to establish load reduction requirements for both California and Nevada permittees, and page 9 of the Basin Plan Amendments (paragraphs three and four) refers to “load allocations” for the urban upland source. Given the disparity between how municipal stormwater dischargers are regulated in California and in Nevada (see also comment 4 below), EPA considers it important that the terminology be precisely defined and consistently applied throughout Chapters 10 and 11 of the Report and the Basin Plan Amendments. The TMDL should also specify that if urban stormwater discharges that are currently considered nonpoint sources become point sources in the future, the load allocations they are currently subject to will become wasteload allocations, without the TMDL itself needing to be re-opened.

3. EPA recognizes that average annual pollutant loads are a more useful expression of this TMDL than daily loads, as discussed in Section 10.4 of the Report. However, as explained further in national Office of Water guidance available at: [http://www.epa.gov/owow/tmdl/draft\\_daily\\_loads\\_tech.pdf](http://www.epa.gov/owow/tmdl/draft_daily_loads_tech.pdf), California and Nevada should also include daily loads in the Lake Tahoe TMDL. The EPA guidance says, “If it is deemed appropriate to express a TMDL on a non-daily time frame, that non-daily TMDL should also include a daily expression” (p. 4). We note that the Integrated Water Quality Management Strategy Project Report ([http://www.swrcb.ca.gov/rwqcb6/water\\_issues/programs/tmdl/lake\\_tahoe/docs/iwqms\\_poj\\_report.pdf](http://www.swrcb.ca.gov/rwqcb6/water_issues/programs/tmdl/lake_tahoe/docs/iwqms_poj_report.pdf), pp. 89-94) includes the analysis needed to develop daily loads. EPA’s guidance further states that adoption of daily loads in the TMDL does not require that WLAs based upon them must be incorporated into subsequent NPDES permit effluent limits (p. viii).

4. As described in Chapter 11, the states of California and Nevada have disparate approaches to regulating municipal stormwater discharges in Lake Tahoe Basin. In California, municipal separate storm sewer system (MS4) NPDES permits have been issued, while Nevada does not have regulatory controls in place for their MS4s. Although both states have issued statewide NPDES permits to their respective Departments of Transportation, the Water Board intends to incorporate load reductions and associated planning requirements into future permit revisions or orders (pp. 11-4 and 11-7), whereas NDEP intends to incorporate wasteload allocations into a Memorandum of Agreement (MOA) with Nevada Department of Transportation (NDOT) rather than via a permit revision or order (p. 11-5).

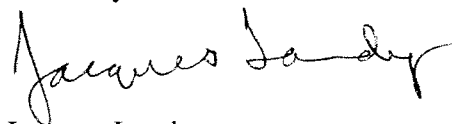
EPA wishes to discuss with NDEP available regulatory and non-regulatory mechanisms that will provide a reasonable assurance that the TMDL will be fully implemented in Nevada. These include:

- issuance of Memoranda of Implementation or Agreement (MOAs) as recommended in the TMDL Report. Questions associated with this approach include: who will be parties to the MOAs, and how will responsibilities be assigned and differentiated? Are these agreements purely voluntary, or do they include legally binding requirements? Will the MOAs be subject to public review and comment prior to adoption? How will MOA compliance be monitored, and what are the consequences of non-compliance? Would a pre-defined number, and/or a particular type of violation of the MOA, trigger termination of the agreement, or a pre-defined response/consequence?
- residual designation of stormwater discharges from Nevada-Tahoe MS4s as requiring NPDES permit coverage pursuant to 40 CFR 122.26(a)(9)(i)(C), 122.26(a)(9)(i)(D), and 40 CFR 123.35(b). Questions associated with this approach include: the appropriate process for residual designation, given that NDEP is a delegated NPDES permitting authority; and whether individual NPDES permits, or coverage under a new or existing general permit, is preferable.
- adoption of a WLA for NDOT and its incorporation into NDOT's NPDES permit via permit revision or administrative order. Given that there is an existing NPDES permit governing NDOT activities in Lake Tahoe Basin, it appears that this is the only appropriate legal mechanism by which load reductions and associated planning requirements can be assigned to NDOT.

EPA understands that there are advantages and disadvantages to either regulatory or non-regulatory approaches, and that there may be others (or combinations of both) that are preferable. Furthermore, we wish to emphasize that we will continue to support, as well as to closely monitor, TMDL implementation in order to provide a reasonable assurance of success on an on-going basis.

We urge both states to promptly approve the Lake Tahoe TMDL, and look forward to our continued collaboration on TMDL implementation and improvement of Lake Tahoe water quality. If you have any questions about these comments, please contact me at (775) 589-5248.

Sincerely,



Jacques Landy  
Lake Tahoe Basin Coordinator  
U.S. EPA Region 9