

**Nevada Division of Environmental Protection**  
**Responses to Nevada Public Comments**

November 2, 2010

4. Washoe County



# WASHOE COUNTY

## Department of Public Works

*"Dedicated to Excellence in Public Service"*

**Dan St. John, Public Works Director**

1001 East 9<sup>th</sup> Street PO Box 11130 Reno, Nevada 89520 Telephone: (775) 328-2040 Fax: (775) 328-3699

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September 7, 2010

Nevada Division of Environmental Protection  
901 S. Stewart Street, Suite 4001  
Carson City, NV 89701

**ATTN: Jason Kuchnicki**  
**Lake Tahoe Watershed Program Manager**

**RE: Final Report: Lake Tahoe Total Maximum Daily Load**  
***Agency Comments***

Dear Mr. Kuchnicki:

Washoe County Department of Public Works is pleased to offer comments to the subject Final Report. While overall the report documents an impressive body of science, at times the report appears to be overly general and imprecise about the means and agencies that will be necessary to achieve the recommended strategy. We respect that at this stage of the process that may be unavoidable, however, as an implementing agency, we cannot commit to an improvement program that we may not be able to afford. However, as our track record would indicate, we are committed to the process and would congratulate the partnering agencies that produced the Final Report. We would respectfully offer the following specific comments to augment initial comments provided to your agency September 2009(attached):

- 1) Page 9-2, Section 9.1.1 Urban Runoff. The report identifies "responsible parties" in achieving the recommended pollution reduction strategies as being local municipalities. While county and city governments at Tahoe must be part of the reduction strategy this statement and many like it throughout the report seem to imply that they are the ONLY responsible parties. We would submit that Washoe County (and likely Douglas County) does not have jurisdiction to force compliance to the recommended strategy on other local government agencies that have considerable lands generating urban runoff such as general improvement districts and school districts. Furthermore, the County does not have the authority to induce private parties, such as HOA (Home Owner's Associations), commercial interests, hospitals, community centers and the like to implement pollution reduction strategies on their properties. Therefore the notion that local municipalities can achieve the reduction strategies within existing legal and financial means may be problematic. At the least, the proposed strategy will require a significant number of county ordinance changes and funding adjustments from what are now very limited sources.
- 2) Page 10-2, Section 10.1.3: The report claims that the expense necessary to meet each 5-year milestone is \$500,000,000. We find no objective analysis that backs up this estimate and might suggest that "floating" a cost without adequate back-up may create undue expectations amongst the public and policy makers. Until the pollution reduction strategies are developed AND APPROVED for each implementing agency, these costs will not be known. While perhaps outside the scope of the Final Report, no mention of financing options to build and maintain the required improvements were offered. The County cannot commit to implement a program which it cannot afford.
- 3) Page 10-5, Section 10.3, second paragraph: The report suggests that agency reduction targets will be set by taking the product of The Urban Upland Load Reduction Target and the Jurisdiction's Individual Base Line. This will prove onerous to those areas, such as Washoe County, that have been assigned what appears to be a disproportionately high percentage of the overall Basin baseline pollutant loading. As stated in our letter of September 2009 (see attached), we believe



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# Response

**WaCo-1:** Section 9.1.1 in the Lake Tahoe TMDL Report identifies local municipalities **and transportation agencies** as the primary responsible parties for implementing the recommended strategy with respect to the urban stormwater source category. This is due to the fact that these entities maintain ownership over the system of primary and secondary roadways and associated stormwater conveyances which are the land uses discharging the greatest fine sediment particle (FSP) and phosphorus loads to Lake Tahoe. The TMDL results highlight the importance of roadways in the generation, transport and discharge of target pollutants. Roadways are a significant source of particulate pollutants due to the combination of wintertime road abrasives applications, road surface and tire degradation, erosion of unprotected road shoulders, and the pulverization of particulate material on the road surface by vehicular traffic. In addition, impervious road networks are the primary transport pathway for stormwater runoff. Even in mixed land use catchments, the road network often comprises the majority of the directly connected impervious area (DCIA), to which pollutant loading has been demonstrated to be highly sensitive using the Pollutant Load Reduction Model.

Section 11.2 of the Lake Tahoe TMDL Report has been revised to address this comment. The most significant changes are as follows:

1. Changed Section 11.2 title to Implementation Entities (as opposed to agencies);
2. Revised Section 11.2.4 sub-section Nevada Local Government Agencies to include the General Improvement Districts that exist within Nevada Lake Tahoe and a revised discussion on:
  - a. NDEP's proposed cooperative agreement implementation approach with respect to local governments
  - b. County versus GID roles and responsibilities in implementing the TMDL;
3. Added sub-section 11.2.5 Other stormwater dischargers which discusses the role of the private sector in implementing the TMDL and to address the specific comment regarding county "authority to induce private parties...to implement pollution reduction strategies on their properties.

The Tahoe Regional Planning Agency's Best Management Practice (BMP) Ordinance requires all public and private parcels to retain the 20-year 1-hour storm onsite. The deadlines for compliance with this ordinance have passed. NDEP encourages public entities such as school districts and GIDs, and private property owners to voluntarily implement BMPs on their parcels prior to enforcement actions by TRPA. Moreover, municipalities may wish to work with TRPA in the future to ensure the coordination of implementation of parcel-level BMPs with that of stormwater load reduction plans.



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## Response

**WaCo-2:** NDEP expects municipalities to evaluate their existing legal and financial mechanisms and demonstrate progress toward resolving these issues. We remain committed to providing support to the extent which we are able.

**WaCo-3:** The \$500,000,000 estimate was derived by dividing the \$1.5 billion estimate to implement the Recommended Strategy into 3 five-year timeframes or milestones. The cost estimate for the Recommended Strategy was developed in a two-fold process. Through the Pollutant Reduction Opportunity analysis, capital and operations and maintenance (O&M) costs estimates were initially derived for various levels of implementation effort (tiers) within each source category. Next, a cost-optimization exercise was undertaken through the Integrated Water Quality Management Strategy analysis to develop the Recommended Strategy for TMDL implementation. More detailed information regarding cost estimate development is contained in the project reports, available on the NDEP and Water Board websites. While NDEP and the Water Board continue to stress that these cost estimates are very coarse, we believe them to be sufficient for TMDL approval. We agree that more accurate cost estimates can be derived once individual stormwater load reduction plans are developed for each implementing jurisdiction.

Financing mechanisms are not a required element for approval of the TMDL and thus are not discussed in the document. That stated, we do not expect urban jurisdictions to bear the costs for implementation alone as existing financing mechanisms for capital water quality improvements are anticipated to be available in the future. However, we would caution that in order to keep this a viable funding stream, jurisdictions must demonstrate accountability by appropriately maintaining these assets. This is the primary reason NDEP expects jurisdictions to include a discussion of financing mechanisms within their respective stormwater load reduction plans and demonstrate a good faith effort toward implementing the plans.

**WaCo-4:** It is important to emphasize that if the county does not commit to implementing the TMDL through a Memorandum of Agreement, NDEP (or USEPA) will likely designate the Tahoe portion of Washoe County as a small MS4 subject to an NPDES Stormwater Permit. Under the Phase II Final Stormwater Rule, NDEP is granted this authority if we determine that discharges cause, or have the potential to cause, an adverse impact on water quality.



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## Response

**WaCo-5:** The contention that Washoe County has been assigned a disproportionately high percentage of the overall urban upland pollutant load is erroneous. Urban stormwater baseline loads are expressed at the source category level only; loadings are not presented at the jurisdictional level within the Lake Tahoe TMDL Report.

The stormwater load reduction plan development process shall include a baseline load analysis for each jurisdiction. Urban stormwater jurisdictions will then be required to achieve the milestone load reductions indicated in Tables 10-1 thru 10-3 from these baseline levels. Section 11.3.1 Urban Uplands subsection Performance, Compliance Assessment, and Reporting in the Lake Tahoe TMDL Report has been revised to read more clearly.

*Final Report Lake Tahoe TMDL Agency Comments, Continued*

that the Washoe County Baseline of 13% is disproportionately high and could result in unachievable 5-year reduction targets.

- 4) Page 11-6, Section 11.2.4 “Local”, last paragraph: To reiterate, Washoe County is ONLY responsible for water quality and erosion control projects within (or immediately adjacent to) County ROW (right-of-way). Other public and private entities are also responsible for similar projects located on their properties. It may be overly simplistic to assume that the Washoe County governmental entity is responsible for all such projects within the boundaries of the County.
- 5) Page 11-6, Section 11.3.1: Report states that “existing practices are insufficient to meet local pollutant load reductions”. We agree in general with this statement; however we urge NDEP and TRPA to review existing regulations and funding agencies such as Nevada Division of State Lands and the USFS (United States Forest Service) to review current policies that work against implementing a “Total Land” or water shed approach for affecting load reductions. We believe that current regulations and policies create un-intended consequences that inhibit installation of efficient and manageable watershed based facilities and county efforts to adopt a stormwater utility district to provide dedicated funding for a comprehensive stormwater management program.
- 6) Page 11-7, Section 11.3.1, last paragraph on page: The policy as stated does not appear to allow transfer of load reduction credits from one jurisdiction to another where perhaps the load reduction is easier or cheaper to obtain. The report should consider a pollutant load reduction credit transfer policy that would establish a secondary market for the buying and selling of credits between entities and jurisdictions.
- 7) Page 11-8, Section 11.3.1, first paragraph on page: The report recommends “municipal jurisdictions” to prepare and submit plans. Does this include GID’s, school districts, and large HOA’s and commercial properties?
- 8) General suggestion: During the development of the implementation strategy, the authors may wish to consider existing barriers to local governments’ ability to establish a dedicated funding source to cover the increased costs of stormwater management. Current regulations that require individual property owners to spend considerable amounts to BMP individual properties may drain public support from adoption of a community wide stormwater management fee. Such a fee could support a “total land” watershed approach for planning and operating a comprehensive stormwater management system using the modern equipment and processes that are needed to treat urban runoff to the levels established in the reference report.

Again we appreciate the opportunity to comment on the TMDL Final Report and would hope that our concerns are addressed in the final review and adoption of this important document. We would make ourselves available to meet with you and the Basin partners to discuss the process.

Sincerely,



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Dan St. John, P.E., F.ASCE  
Public Works Director

DMS/ke

cc: John Breternitz, County Commissioner  
Dave Childs, Assistant County Manager  
Kimble Corbridge, Assistant Public Works Director

Mahmood Azad, Douglas County Engineer  
Doug Martin, District Manager, NTCD

## Comment

## Response

*Final Report Lake Tahoe TMDL Agency Comments, Continued*

that the Washoe County Baseline of 13% is disproportionately high and could result in unachievable 5-year reduction targets.

Refer to response **WaCo-5**

- 4) Page 11-6, Section 11.2.4 "Local", last paragraph: To reiterate, Washoe County is ONLY responsible for water quality and erosion control projects within (or immediately adjacent to) County ROW (right-of-way). Other public and private entities are also responsible for similar projects located on their properties. It may be overly simplistic to assume that the Washoe County governmental entity is responsible for all such projects within the boundaries of the County.

**WaCo-6:** Section 11.2 in the Lake Tahoe TMDL Report has been revised to address this comment; see Response WaCo-1 for additional information regarding the scope of the revisions made.

- 5) Page 11-6, Section 11.3.1: Report states that "existing practices are insufficient to meet local pollutant load reductions". We agree in general with this statement; however we urge NDEP and TRPA to review existing regulations and funding agencies such as Nevada Division of State Lands and the USFS (United States Forest Service) to review current policies that work against implementing a "Total Land" or water shed approach for affecting load reductions. We believe that current regulations and policies create un-intended consequences that inhibit installation of efficient and manageable watershed based facilities and county efforts to adopt a stormwater utility district to provide dedicated funding for a comprehensive stormwater management program.

**WaCo-7:** NDEP remains committed to working with the Nevada urban stormwater jurisdictions to more fully understand and overcome real and perceived barriers to implementation.

- 6) Page 11-7, Section 11.3.1, last paragraph on page: The policy as stated does not appear to allow transfer of load reduction credits from one jurisdiction to another where perhaps the load reduction is easier or cheaper to obtain. The report should consider a pollutant load reduction credit transfer policy that would establish a secondary market for the buying and selling of credits between entities and jurisdictions.

**WaCo-8:** Section 11.3.1 Urban Uplands subsection Performance, Compliance Assessment, and Reporting in the Lake Tahoe TMDL Report has been revised to address various comments and to read more clearly. The Lake Clarity Crediting Program (Crediting Program) does not preclude the formal transfer or sharing of load reduction credits. The current version of the Crediting Program Handbook, however does not specify protocols regarding secondary market buying and selling of credits between entities. Jurisdictions have requested enhanced guidance with respect to how this credit sharing/transfer could work. NDEP will ensure this information is delivered by the end of the current Crediting Program Support Services Project (scheduled for completion in winter of 2011).

- 7) Page 11-8, Section 11.3.1, first paragraph on page: The report recommends "municipal jurisdictions" to prepare and submit plans. Does this include GID's, school districts, and large HOA's and commercial properties?

- 8) General suggestion: During the development of the implementation strategy, the authors may wish to consider existing barriers to local governments' ability to establish a dedicated funding source to cover the increased costs of stormwater management. Current regulations that require individual property owners to spend considerable amounts to BMP individual properties may drain public support from adoption of a community wide stormwater management fee. Such a fee could support a "total land" watershed approach for planning and operating a comprehensive stormwater management system using the modern equipment and processes that are needed to treat urban runoff to the levels established in the reference report.

**WaCo-9:** Section 11.3.1 Urban Uplands subsection Performance, Compliance Assessment, and Reporting in the Lake Tahoe TMDL Report has been revised to address various comments and to read more clearly. Stormwater load reduction plans (SLRPs) are intended to be developed at the jurisdictional scale. As such, only one SLRP at the county scale will be necessary for Washoe County. The SLRP may address public and private parcels if Washoe County plans to rely on this component as a means to fulfill its load reduction commitments. In that case, Washoe County may choose to enact an ordinance and enforcement program requiring implementation of parcel-level BMPs and/or work with TRPA's Erosion Control Team to develop and implement site-specific BMP plans on individual public and private parcels.

Again we appreciate the opportunity to comment on the TMDL Final Report and would hope that our concerns are addressed in the final review and adoption of this important document. We would make ourselves available to meet with you and the Basin partners to discuss the process.

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DMS/ke

cc: John Breternitz, County Commissioner  
Dave Childs, Assistant County Manager  
Kimble Corbridge, Assistant Public Works Director

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Doug Martin, District Manager, NTCD

**WaCo-10:** No analysis of perceived barriers to implementation and financing mechanisms was conducted because it is not a required element for TMDL approval. That stated, NDEP remains committed to working with implementing entities to identify and overcome such impediments.