

EPA Testimony at July 8-9, 2009 Lahontan Water Board Hearing re: CWA 303(d) List of Impaired Water Bodies

My name is Jack Landy. I am the U.S. EPA Reg. 9 representative to the Lake Tahoe Basin and TMDL Liaison to this Regional Board. Thank you for the opportunity to comment on this item. I would like to commend Lahontan staff for the tremendous effort and excellent job done in compiling the draft Integrated Report and in addressing concerns raised about it. EPA tentatively considers that the majority of assessment determinations are consistent with federal listing requirements. However, I would like to identify a few concerns with the current draft that we consider potential vulnerabilities to the Regional Board. Our overriding concern is that the draft report contains determinations that certain data and information are not applicable to making 303(d) listing recommendations. Consequently, some waters and/or pollutants may have been inappropriately omitted from the impaired waters list. The omission of waters from the list presents a potential vulnerability to this Board, to the State Board, and--depending on contents of the final 303(d) list submittal--possibly to EPA.

1. Appendix C of the staff report recommends not including in the proposed CWA Section 303(d) list a number of waterbodies for certain pollutants, including turbidity, total dissolved solids, and a variety of chemical-specific constituents, based on the lack of temporal representation of the available data. We understand the assertion that the natural variability of many waterbodies in the Lahontan Region makes quarterly or less frequent sampling unsatisfactory for assessment decisions. Federal listing regulations require States to assess available data in comparison to applicable water quality standards. EPA guidance does not establish a minimum threshold of data to complete an assessment. Thus we encourage Regional Board staff to develop a listing methodology that takes into account limited data sets; otherwise, EPA may find it appropriate to list some of these waterbody-pollutant combinations. Impairments can also potentially be resolved by means of other available programs as necessary (increased or revised monitoring, site specific objectives, etc).

2. Similarly, the Region's draft Integrated Report appears to consider temperature data for certain waterbodies as not temporally representative for purposes of evaluating baseline conditions and the existence of trend. Although EPA agrees that continuous temperature monitoring would be preferable for determining whether standards are being achieved, the absence of such information does not preclude the evaluation of applicable narrative water quality objectives and beneficial uses. Again, this **may** yield assessment decisions to list these waterbodies.

Furthermore, it appears that the assessments of certain waterbodies designated to sustain coldwater fisheries may not have used available literature-based evaluation guidelines in determining whether those waterbodies are achieving narrative temperature objectives. Using such information to support an

impairment decision is particularly appropriate in evaluating if habitat of the threatened Lahontan cutthroat trout is adequately protected. If appropriate, this information can be used in combination with monitoring information to further refine stream beneficial use designations.

3. Finally, the draft report states that the California Toxics Rule (CTR) saltwater aquatic life criteria are probably not appropriate for evaluating the Lahontan Region's inland saline waters, due to the lack of inland species having been used in developing CTR criteria. EPA considers that, in the absence of other numeric water quality objectives in the Basin Plan, CTR criteria should be applied for purposes of 303(d) listing, and that other programs (such as development of site specific objectives) may be employed to address these cases as appropriate.

I have discussed the concerns above with Regional Board, as well as with State Board staff, and appreciate the efforts to address them. These discussions have explored approaches to not only evaluating impairment, but also what alternative responses are appropriate if impairment does exist. I am willing to work with staff and provide technical assistance on these matters, but wish to note that, before the listing decisions reach EPA for approval, they will be assessed and reviewed by the State Board, which will reconcile and compile them with other Regional Boards' lists. Therefore, we encourage further dialogue between Regional Board and State Board staff in addressing these concerns. Once EPA receives the final 303(d) list submittal from California, we will review the State's assessment decisions. We typically focus on those waters omitted from the state's list. Currently, we cannot definitively state whether we would add waters and/or pollutants from this Region to the State's list; nonetheless, we remain concerned that some assessments have been incompletely evaluated.

I appreciate your attention, and would be happy to answer any questions you may have.