

Response to Comments – September 30, 2011

Basin Plan Amendment - Pesticide Prohibition & Exemption Criteria

(Comment deadline 5 p.m., May 13, 2011)

**Nevada Division of Environmental Protection -
Bureau of Safe Drinking Water and Bureau of Water Pollution Control**

http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/comments051311/ndep.pdf

Comments	Response
<p style="text-align: center;">Nevada Division of Environmental Protection Bureau of Safe Drinking Water and Bureau of Water Pollution Control</p> <p style="text-align: center;">Comments to the Lahontan Regional Water Quality Control Board “Draft Basin Plan Language, Attachment 2: Draft Waste Discharge Prohibition and Exemption Criteria Language – Pesticide Basin Plan Amendment”</p> <p><u>General Comments:</u></p> <ul style="list-style-type: none"> ➤ The Nevada Division of Environmental Protection (NDEP) appreciates the opportunity to comment on this important document and looks forward to working with the Lahontan Regional Board on these projects in the future. ➤ The Section-Specific comments include an item designed to target the fact that NDEP intends to limit our interest in proposed projects to those that only involve shared waters that exist within Nevada (i.e. Lake Tahoe) or interstate waters that flow into Nevada (i.e. the Truckee, Carson & Walker Rivers). ➤ As included in the Section-Specific Comments, NDEP requests active involvement in the review and decision-making process related to this Basin Plan. The dynamics of water bodies make it difficult to predict outcomes of proposed projects, and this is a good step toward ensuring that all parties are working together to ensure protection of our natural environment and communities who use our waters for consumption. ➤ As was discussed on the May 9, 2011 conference call, coliform and turbidity can be secondary adverse effects in projects designed to eradicate invasive species. Even for non-chemical approaches, it is prudent to evaluate and track projected and actual effects a project will have on drinking water quality. This is true of all water purveyors, but in the Tahoe Basin in particular, systems with Filtration Avoidance status must be actively involved in this evaluation process going forward with each project. NDEP comment on this Lahontan Regional Board Draft Basin Plan does not constitute concurrence that the future projects will not result in Filtration Avoidance status issues. With that said, the detection of a regulated chemical would not, in and of itself, nullify Filtration Avoidance status. ➤ As was also discussed on the call, the application of pesticides has the potential to impact any drinking water source, filtered or unfiltered. Intakes for filtration treatment plants are also <p style="text-align: center;">Page 11</p>	<div data-bbox="1092 305 1879 544" style="border: 1px solid black; padding: 5px;"> <p>NDEP-Drinking Water R1: Based on meetings with NDEP and comments submitted by NDEP, and direction from the Regional Board, the proposed Basin Plan language contains the following information regarding project applications submitted to the Regional Board: "The Regional Board will consult with NDEP when projects affect interstate waters that exist within, or flow, to the State of Nevada."</p> </div> <div data-bbox="1092 571 1879 912" style="border: 1px solid black; padding: 5px;"> <p>NDEP-Drinking Water R2: The Water Board will consult with NDEP when appropriate. The Water Board is the primary agency involved in the decision making process, in that it is the regulatory body with authority to grant or deny a project proponent's request for an exemption to the pesticide prohibition. Though NDEP does not have decision making authority, NDEP's review and comment of proposed projects will be considered when determining whether a project satisfies all the exemption criteria needed to qualify for an exemption. Refer also to NDEP-Drinking Water R1.</p> </div> <div data-bbox="1092 940 1879 1237" style="border: 1px solid black; padding: 5px;"> <p>NDEP-Drinking Water R3: Water Board staff agrees that the potential and actual effects of non-chemical approaches should be evaluated and tracked. However, the exemption to the prohibition only applies to projects that propose chemical means to control pests. Water Board staff are actively involved with the Lake Tahoe Aquatic Invasive Species Working Committee, which collaborates to evaluate and track the effects of all control methods, including both non-chemical and chemical treatments.</p> </div> <div data-bbox="1092 1265 1879 1318" style="border: 1px solid black; padding: 5px;"> <p>Refer to NDEP – Drinking Water R4 on next page.</p> </div>

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<p>important to consider as they are designed to treat for bacteria, viruses and protozoa, not chemicals.</p> <p>➤ NDEP recommends that any Basin Plan Aquatic Pesticide Use Exemptions granted by the Lahontan Regional Board be handled on a project-specific basis and that recurring annual “blanket” Exemptions not be utilized.</p> <p><i>Section-Specific Comments:</i> All comments refer to the “Draft Basin Plan Language, Attachment 2: Draft Waste Discharge Prohibition and Exemption Criteria Language – Pesticide Basin Plan Amendment” Mar 2011, Draft for Public Review</p> <p>➤ At the bottom of page 2, the NDEP suggests that the definition of a “pesticide” be expanded to include non-chemical approaches in order to be able to address secondary adverse effects from biomass decomposition & other issues. If the Lahontan Regional Board has another regulatory vehicle to address this concern, the NDEP is interested in discussion on what that mechanism is. The following language is offered:</p> <p><u>For the purposes of this Exemption, “pesticides” also includes non-chemical applications of controls for aquatic animal or plant pests that could have a temporary adverse effect on water quality.</u></p> <p>➤ On page 7, the NDEP requests consideration of the following language insertions in the section regarding Exemption Criteria for Aquatic Pesticide Use. The text in red was suggested by CDPH on May 19, 2011; however, the NDEP suggests amending the language to be less specific about distance to a surface water intake.</p> <p>An exemption request must contain the following information acceptable to the Regional Board. <u>The Regional Board will act in consultation with the California Department of Public Health (CDPH), the Nevada Division of Environmental Protection (NDEP) and drinking water purveyors for review and acceptance of the request. The NDEP will limit involvement to interstate waters that exist within, or flow to, the State of Nevada.</u></p> <p>1. Project Information shall be submitted with four (4) copies and is to include:</p> <p>a. Project description including, but not limited to, proposed schedule, duration, name of pesticide, method and rate of application, spatial extent, water body, control/mitigation measures to be used, contact information.</p>	<p>NDEP-Drinking Water R4: We acknowledge that aquatic pesticide treatments may have the potential to impact surface water drinking intakes. Additional exemption criteria, including a requirement to coordinate with affected water purveyors and notify potentially affected water users, have been added to minimize or avoid any impacts. See the section of Chapter 4 of the Basin Plan titled “Exemption Criteria for Aquatic Pesticide Use.”</p> <p>NDEP-Drinking Water R5: As we developed the amendment, we realized there were a few limited circumstances where it may not be necessary for the Board to grant exemption for individual projects. If the Water Board adopts the amendment as written today, it acknowledges the importance of protecting public health and the sense of urgency for projects involving Vector Control and those declared as Emergencies by the Governor. For these limited circumstances provided all the criteria are satisfied, an exemption is granted for one-time and on-going activities, and no further action is required by the Board. Though projects will be considered on a case-by-case basis, the Water Board may allow an exemption to apply to a period of time that extends throughout a season or annually. These extended exemptions may be appropriate if the aquatic pesticide treatment is proposed for maintenance activities such as invasive weed control conducted by the Bureau of Land Management.</p> <p>NDEP-Drinking Water R6: The definition of pesticide will not be expanded to include non-chemical controls. The definition of pesticide proposed for inclusion in Chapter 4 of the Basin Plan is codified in the California Food and Agriculture Code section 12753. Water Board staff recognize that non-chemical control measures may be proposed for control of aquatic invasive species, however non-chemical treatments will be considered and permitted by the Water Board separately and outside the scope of this amendment.</p>

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<p>b. Purpose and need for project.</p> <p>c. The chemical composition of the pesticide to be used, including inert ingredients.</p> <p>d. An estimate of the maximum foreseeable concentrations of pesticide components in any surface water intake used for drinking water supplies within 1/2 mile of <u>with any potential to be impacted by the point of application.</u></p> <p>e. Public notification and warning plan must be implemented before and during the project and include any water use restrictions or precautions during treatment if necessary.</p> <p>f. Suitable measures will be taken to identify <u>Documentation that outreach was conducted to communicate with drinking water purveyors with potentially affected sources of potable surface and ground water intakes. Drinking Water Purveyors will respond, stating their interest in continuing involvement in the project, or if they do not believe the project has the potential to adversely affect their water supply. The project proponent will, and to provide potable drinking water where necessary and will obtain any necessary permits from CDPH and NDEP for supply of the potable drinking water.</u></p> <p>g. Spill contingency plan to address proper transport, storage, spill prevention and cleanup.</p> <p>In the proposed language offered in item f, the NDEP anticipates that a list of drinking water purveyors could be developed and a project proponent would simply be required to contact everyone on the list to determine their interest in continued involvement.</p> <p>➤ On page 8, the NDEP request consideration of the following language insertion in the section regarding Exemption Criteria for Vector Control.</p> <p>2. Aquatic pesticide applications must minimize impacts to beneficial uses by implementing BMPs to limit the effects of the pesticide to the shortest time and within the smallest area necessary for project success. <u>If the beneficial uses include drinking water, then the impacts must be eliminated.</u></p> <p>Jennifer L. Carr, P.E., C.E.M. Chief, Bureau of Safe Drinking Water</p> <p>June 3, 2011 P/BSDW/Bureau Chief/Unique Issues/</p>	<p>NDEP-Drinking Water R9: Water Board staff believes the reference to 1/2 mi distance from pesticide application was a reasonable distance to require project proponents to provide additional exemption criteria (reasonably foreseeable pesticide concentration in drinking water intake) to further protect nearby surface drinking intakes. Water Board staff maintained the 1/2 mile distance because it was suggested by California Department of Public Health – Drinking Water Branch, and it was the distance that water purveyors had recommended for inclusion in the recently adopted TRPA shorezone ordinances (currently under litigation), which instead only require a 1/4 mile setback of piers from any surface water drinking intakes.</p> <p>NDEP-Drinking Water R10: Water Board staff recommends including similar language that requires project proponents to (1) provide outreach and solicit involvement from water purveyors, and (2) obtain any necessary permits from California Department of Public Health or NDEP for supply of potable drinking water. Modified/additional language can be found within Chapter 4 of the Basin Plan under the section titled “Exemption Criteria for Aquatic Pesticide Use.”</p> <p>NDEP-Drinking Water R11: A list of water purveyors in the Lake Tahoe Basin will be provided as part of the forthcoming project application materials that will be developed, but such list should not be incorporated into our Basin Plan.</p> <p>NDEP-Drinking Water R12: The existing language is reasonable and acknowledges that even with effective management measures in place impacts to drinking water may not be eliminated. However, any impacts should be short-term and reduced to the extent possible.</p>