

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF OCTOBER 7 - 8, 2008
South Lake Tahoe**

ITEM: 3

**SUBJECT: MINUTES OF THE REGULAR MEETING OF JULY 23-24, 2008 IN
TRUCKEE, CA**

DISCUSSION: The draft minutes are attached for your consideration.

3-0001



California Regional Water Quality Control Board

Lahontan Region



Linda S. Adams
Secretary of
Environmental Protection

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Arnold Schwarzenegger
Governor

DRAFT MINUTES

July 23-24, 2008

Regular Meeting

Town of Truckee Council Chambers
10183 Truckee Airport Road
Truckee, CA 96161

Mr. Clarke, Chair, called the meeting to order at 3:35 p.m. on July 23, 2008

Board Members Present

Jack Clarke, Apple Valley
Mike Dispenza, Palmdale
Keith Dyas, Rosamond (left at 10:10 a.m. on 7/24)
Amy Horne, Ph.D., Truckee
Don Jardine, Markleeville
Eric Sandel, Truckee (arrived at 4:00 p.m. on 7/23)
Susan Van Dam, Barstow

Board Member Absent

None

Legal Counsel

David Coupe, State Water Resources Control Board
Jorge Leon, State Water Resources Control Board

Staff Present

Harold Singer, Executive Officer
Bob Dodds, Assistant Executive Officer
Chuck Curtis, Supervising WRCE
Lauri Kemper, Supervising WRCE
Cindi Mitton, Supervising WRCE
Bud Amorfini, Environmental Scientist
Laurie Applegate, Executive Assistant
Richard Booth, Senior Engineering Geologist
James Brathovde, Engineering Geologist
Doug Cushman, Senior WRCE

Taylor Farnum, Environmental Scientist
Scott Ferguson, Senior WRCE
Alan Miller, Senior WRCE
Dale Payne, Environmental Scientist
Eric Shay, Staff Services Analyst
Andrea Stanley, Engineering Geologist
Eric Taxer, WRCE
Robert Tucker, WRCE
Tobi Tyler, WRCE

Addressing the Board

Christy Daugherty and Mary Huggins, CAL FIRE
Dennis A. Dickinson
John Eaton, Mountain Area Preservation Foundation
Dave Gotschall, Truckee Tahoe Airport District

California Environmental Protection Agency

3-0002

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Mike Hogan, Integrated Environmental Restoration Services
Ed James and Genie Azad, Carson Water Subconservancy District
Everd McCain, Belfast Ranch
Perry Norris, Truckee Donner Land Trust
John Pickett, Tahoe Fire and Fuels Team
Jennifer Quashnick, Sierra Forest Legacy
Blake L. Riva, Northstar Mountain Properties
Mark Shadowens and Joseph Barron, Northstar Fire Department
Mike Staudenmayer, Northstar Community Services District
Geoff Stephens, Northstar Property Owners' Association
Lisa Wallace, Truckee River Watershed Council

OTHER BUSINESS

1. Executive Officer's Report

Mr. Singer discussed items from the July written report and the spill report.

Mr. Singer and Ms. Kemper discussed the 2008 Lake Tahoe Summit to be held in South Lake Tahoe on August 16. California Governor Arnold Schwarzenegger, Nevada Governor Jim Gibbons and U.S. Senator Dianne Feinstein will be attending the Summit. Dr. Horne and Mr. Jardine expressed an interest in attending.

Mr. Singer gave an update regarding Big Tree Cleaners in Tahoe City. He also discussed articles that appeared in the San Francisco Chronicle regarding Searles Valley Minerals.

Mr. Singer discussed a decision of the Orange County Superior Court regarding the Los Angeles Regional Water Board related to stormwater. Mr. Coupe discussed the possible consequences of the Court's orders. Mr. Coupe answered questions from the Board.

Mr. Singer handed out a Fact Sheet about the Surface Water Ambient Monitoring Program. He discussed the progress made toward updating the State Water Board's Caltrans Statewide Permit and the effort to update the Statewide Management Agency Agreement between the State Water Board and the U.S. Forest Service.

2. CLOSED SESSION

The Board met in closed session from 4:25 p.m. to 5:24 p.m. to discuss Item 2h. The Board reconvened in open session at 5:25 p.m.

The Board recessed for dinner at 5:25 p.m.

3-0003

California Environmental Protection Agency

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Regular Meeting, continued
7:00 p.m., July 23, 2008

Mr. Clarke, Chair, called the meeting to order at 7:05 p.m.

Board members present: Jack Clarke, Mike Dispenza, Keith Dyas, Amy Horne, Don Jardine, Eric Sandel and Susan J. Van Dam. Board members absent: none.

3. PUBLIC FORUM

No one addressed the Board during the Public Forum.

4. MINUTES

Minutes of the Regular Meeting of May 14-15, 2008 in Tahoe City

- **Motion:** Moved by Mr. Dispenza, seconded by Mr. Sandel and **unanimously carried** to adopt the minutes as written. Note: Dr. Horne abstained because she did not attend the May meeting.

5. ADOPTION OF UNCONTESTED CALENDAR

Mr. Singer recommended the Board adopt Items 6 (with late revision sheet), 7, 8, 9 (with late revision sheet), 11, 12 (with minor revision to page 4, Finding No. 7 of the Resolution), 13 (see note below) and 16 (see note below), on the uncontested calendar.

Item 13 – Resolution Honoring Leo Poppoff for His Service as a Member of the Lahontan Water Board and His Dedication to Furthering Scientific Knowledge of the Lake Tahoe Basin: Mr. Singer recognized Leo's many efforts and contributions to the Lahontan Water Board and the Lake Tahoe region. He noted the Resolution would be presented to Leo's family at the memorial service to be held in Mountain View on August 4.

Item 16 – Town of Truckee's State Route 89 and Alder Drive/Prosser Dam Road Roundabout Project: Mr. Sandel commented that the project proponent plans to fill ephemeral wetlands and perform offsite mitigation. He noted that the project site has possibilities for onsite mitigation and suggested that staff work with the project proponent on onsite restoration of the wetland material.

Mr. Singer noted that the Town of Truckee does not expect to implement the restoration plan in the fall of 2008 as indicated in Finding No. 6 of the proposed Resolution, but rather in the fall of 2009. Mr. Singer did not recommend a change to the wording in the Resolution but brought the delay to the Board's attention. In response to Mr. Sandel's suggestion, Mr. Singer noted that staff will meet with the project proponent to see if implementation of onsite restoration of the wetland material is feasible or if obstacles exist.



- **Motion:** Moved by Dr. Horne, seconded by Mr. Dyas and unanimously carried to adopt the uncontested calendar as amended. Mr. Jardine abstained from voting on Item 12 because of his employment with Caltrans.

ENFORCEMENT

10. **Consideration of a Settlement of Claims for Administrative Civil Liability Through the Adoption of an Administrative Civil Liability Order for: Northstar Mountain Properties, LLC, for Violation of NPDES General Permit for Storm Water Discharges Associated with Construction Activities, State Water Resources Control Board Order No. 99-08-DWQ, Violation of Water Quality Certification Order Dated June 9, 2006, Violation of Prohibitions Prescribed in the Water Quality Control Plan for the Lahontan Region, and Violation of Cleanup and Abatement Order No. R6T-2006-0049**

Mr. Clarke explained Item 10 would not be conducted as a formal hearing. He outlined the procedures that would be followed and introduced the advisory and prosecution teams. Mr. Clarke noted the Board would consider whether to accept the settlement of the Administrative Civil Liability (ACL) as presented by the prosecution team.

Mr. Singer noted two comment letters were received after the close of the comment period. The late comment letters were not shared with the Board members pending a ruling by the Chair as to whether the letters would be accepted into the record. Chairman Clarke ruled not to accept into the record the two comment letters received after the close of the comment period.

Mr. Singer disclosed a phone conversation the previous week with members of the advisory team, prosecution team and Northstar Mountain Properties, LLC (NMP). During that phone conversation, members of the advisory team raised questions about the ACL Order and the supplemental environmental project (SEP). Mr. Singer noted the prosecution team and NMP did not have much time to respond to the questions raised by the advisory team and as a result, might not be prepared to ask the Board to make a decision at the Board meeting.

Jorge Leon, attorney with the State Water Board's Office of Enforcement and attorney representing the Lahontan Water Board's prosecution team, asked the Board to hear the prosecution team's presentation, comments from NMP and public comments. Mr. Leon explained that the prosecution team was not asking for a final Board decision at this time, but was asking the Board to provide feedback regarding the direction the Board would like the prosecution team to take.

Eric Taxer gave the presentation for the prosecution team. He discussed the compliance history and chronology, summarized the ACL Order, discussed the reasons for the Order and summarized the issues.

3-0005



Blake L. Riva, Northstar Mountain Properties (NMP) gave the presentation on behalf of NMP. Mike Hogan, Integrated Environmental Restoration Services and NMP consultant, discussed the proposed SEP.

Addressing the Board: Perry Norris, Truckee Donner Land Trust; Dave Gotschall, Truckee Tahoe Airport District; Lisa Wallace, Truckee River Watershed Council; John Eaton, Mountain Area Preservation Foundation; Mark Shadowens and Joseph Barron, Northstar Fire Department; Geoff Stephens, Northstar Property Owners Association; and Mike Staudenmayer, Northstar Community Services District.

Board members discussed three questions asked by Mr. Taxer during his presentation: 1) Do you concur that a settlement is appropriate in this matter, 2) if so, is the proposed dollar amount sufficient to address the alleged violations, and 3) should Water Board staff and NMP continue to pursue the proposed SEP? Board members individually commented in support of a settlement in this matter and that the dollar amount proposed was sufficient to address the alleged violations.

Board members discussed the third question. Dr. Horne commented that there were many positive things about the proposed SEP. She agreed that the money should be put to use locally and that the SEP would develop information that could be shared with others. She suggested that staff reexamine the assumption that SEP funds could not be used in the Northstar community. Dr. Horne noted the water quality benefits of performing a SEP project on Waddle Ranch. She also noted there were equal or greater benefits to doing similar projects that would protect the people who live and have property in the Northstar community from wildfire. She suggested continuing to work on the SEP to ensure the best possible SEP for the community. Dr. Horne suggested that a more open public process be developed for future SEPs.

Board members concurred with Dr. Horne's comments. Mr. Dyas commented that he was under the impression that the SEP had to be proposed by the discharger. He suggested the proponent for the candidate SEP site negotiate with NMP.

Mr. Leon thanked the Board for their comments and feedback.

OTHER BUSINESS

14. **Public Hearing: Review of Order for Technical Report Pursuant to Water Code Section 13267 for Big Tree Cleaners, Tahoe City, Placer County**

This item was removed from the agenda. It was not considered by the Board.



15. Report on Settlement Discussions Regarding a Potential Administrative Civil Liability Order for Everd A. McCain, B. J. Deis, and McCain and Associates for Violations of (1) Waste Discharge Prohibitions Specified by the Water Quality Control Plan for the Lahontan Region, (2) California Water Code Section 13267, (3) Clean Water Act 301, (4) California Water Code 13304, and (5) Clean Water Act Section 401 Water Quality Certification – Belfast Ranch – Skeet Dam and Buz Dam, Lassen County

Jorge Leon gave a progress report regarding settlement discussions with the McCains. He noted progress has been made and Water Board staff issued conditionally accepted the stabilization plan for Buz and Skeet Dams. He also noted that on July 14, 2008, the State Water Board's Division of Water Rights issued a Notice of Proposed Revocation of Permits to Mr. McCain affecting the water rights of Buz and Skeet Dams. Mr. Leon explained that resolution of the water rights issues could take years.

Everd McCain stated that he retained legal counsel to represent him at a Division of Water Rights hearing on the proposed revocation. He discussed the temporary stabilization plan and noted the Department of Fish and Game approved the plan and a contractor has started work. Mr. McCain answered questions from the Board.

Mr. Singer outlined five issues the Board asked to be resolved in the settlement. He noted some of the issues can be resolved such as the stabilization plan and imposition of a penalty of some cash value. However, other issues such as submitting a proposal for either rebuilding the dam or removing the material, and third party oversight of the design of the dam are now in question and, because of the Division of Water Rights Notice of Proposed Revocation of Permits, could take years to resolve.

Mr. Leon suggested the Board complete the ACL process that began in March 2008 by focusing on the issues that can be addressed at the present time. He noted that Mr. McCain can move forward with the other aspects related to rebuilding or removing the dams if and when the Division of Water Rights issues are resolved.

Following discussion, Mr. Coupe suggested that the Board do one of two things at the January 2009 meeting in the north: either consider a settlement; or in the event there is no settlement, deliberate on the evidence presented at the March 2008 hearing and render a decision on the proposed administrative civil liability order based on the information heard in March 2008. The Board concurred.

3-0007



2. CLOSED SESSION

The Board met in closed session from 9:50 p.m. to 10:00 p.m. to discuss Item 2a. The Board reconvened in open session at 10:00 p.m.

The Board meeting recessed at 10:00 p.m.

Regular Meeting, continued 8:30 a.m., July 24, 2008

Mr. Clarke, Chair, called the meeting to order at 8:35 a.m.

Board members present: Jack Clarke, Mike Dispenza, Keith Dyas, Amy Horne, Don Jardine, Eric Sandel and Susan J. Van Dam. Board members absent: none.

17. PUBLIC FORUM

Dennis Dickinson, resident of Truckee, handed out a letter dated July 24, 2008 and a CD to the Board members regarding Sierra Meadows Wetlands in Truckee. Mr. Dickinson expressed concern that past development has been built over the wetland altering the flow of water to the Truckee River. He also expressed concern regarding the Truckee Town Council and Planning Commission's pending consideration of the Hilltop Master Plan scheduled for August 7, 2008. He commented that the proposed development would impact the amount of water that would move through the Sierra Meadows Wetlands to the Truckee River. Mr. Dickinson noted a Mitigated Negative Declaration was circulated and expressed concern that the water flow was not adequately studied. He asked the Lahontan Water Board to direct staff to look at the water quality issues on the Sierra Meadows Wetlands before the Town approves the Hilltop Master Plan.

Lauri Kemper noted that Tob Tyler, Lahontan Wetlands Program Manager, spoke with Mr. Dickinson and is planning to visit the site.

OTHER BUSINESS

20. **Resolution Delegating Authority to the Executive Officer to Grant Exemptions to Basin Plan Prohibitions Regarding Development and Disturbance within Floodplains, Stream Environment Zones, and Steep Slopes in the Tahoe Basin and Truckee River Hydrologic Unit**

Mr. Singer handed out and discussed a revised copy of the proposed Resolution (Revised July 22, 2008 entitled Resolution Clarifying and Expanding Prior Delegation of Authority to the Executive Officer to Grant Exemptions and Exceptions to Basin Plan Prohibitions). He handed out and discussed a comment letter from Michael W. Graf on behalf of the Sierra Forest Legacy,



Tahoe Area Sierra Club Group and the League to Save Lake Tahoe expressing concerns with the Resolution. Mr. Singer, Ms. Kemper, and Mr. Coupe answered questions from the Board.

Mr. Singer asked the Board to adopt the Resolution as revised on July 22, 2008.

Addressing the Board: Jennifer Quashnick, Sierra Forest Legacy.

- **Motion 1:** Moved by Mr. Dyas and seconded by Mr. Dispenza to reaffirm Resolution No. 6-90-72 Delegating Certain Powers and Duties to the Executive Officer.

Board members discussed the motion. Dr. Horne commented that she did not support the motion. She stated that she was uncomfortable delegating unknown authority and appreciated Mr. Singer's conservative approach. She noted the Board could continue to expand the delegation as issues arise. Dr. Horne supported the expanded public notification and establishment of a mailing list encouraging public comments in the revised Resolution. Dr. Horne suggested the Board memorialize reconsidering application of the public health and safety exemption for fuel treatment at the time the Board adopts the Basin Plan amendment.

Mr. Dispenza commented that Resolution No. 6-90-72 has been in effect for 18 years and has not done any damage. He stated he could not see trying to fix something that is not broken.

Mr. Clarke called for the question.

- **Voting yes: Mr. Dyas and Mr. Dispenza. Voting No: Mr. Clarke, Dr. Horne, Mr. Jardine, Mr. Sandel, and Mrs. Van Dam. Motion 1 failed.**

- **Motion 2:** Moved by Dr. Horne, seconded by Mr. Sandel and **unanimously carried** to adopt the Resolution proposed by Mr. Singer as revised July 22, 2008.

18. Resolution Granting the Tamarack Fuels Reduction Project an Exemption to a Prohibition Contained in the Water Quality Control Plan for the Lahontan Region

Doug Cushman gave the staff presentation. He discussed the proposed project, and the Basin Plan prohibitions and exemption findings for public health and safety. Mr. Cushman recommended the Board adopt the Resolution as proposed granting an exemption to the Basin Plan prohibition. Mr. Cushman answered questions from the Board.



Dr. Horne commented that she would like to see the Resolution approved under environmental restoration rather than public health and safety. She felt the Board was missing an opportunity to develop information to answer questions that stakeholders have about how to operate in riparian areas and SEZs.

- **Motion 1:** Moved by Dr. Horne to adopt the Resolution under the environmental restoration exemption in the Basin Plan.

Ms. Kemper suggested the Board consider making the findings for public health and safety and environmental restoration.

- **Amended Motion 1:** Moved by Dr. Horne to approve an exemption to the Basin Plan prohibition making the findings for public health and safety and environment restoration.

Mr. Cushman noted that Mr. Pickett, operations manager for the Tahoe Fire and Fuels Team and project proponent, would like to address the Board.

Dr. Horne withdrew her motion.

John Pickett discussed the environmental restoration aspects of the project. He noted he worked with the Tahoe Science Consortium to develop monitoring protocols for the project, opening the project to a year-and-a-half peer review process. He also noted he worked with a core team comprised of Lahontan, TRPA and NRCS staff, a registered professional forester and professional geotechnical engineer. He pointed out that Rubicon Properties was ranked in the community wildfire protection plan as being the most extreme fire hazard in the community. Mr. Pickett thanked the Board for considering the project and invited them to tour the site.

Mr. Singer expressed concern that adding the environmental restoration exemption findings to the Resolution at the meeting would not provide adequate time for public review. He recommended the Board adopt the Resolution as proposed under the public health and safety exemption. He noted the Board could amend the Resolution at a later date providing adequate public notice and incorporating additional exemption findings and rationale for an environmental restoration project.

- **Motion 2:** Moved by Dr. Horne, seconded by Mr. Sandel and **unanimously carried** to adopt the Resolution for the Tamarack Fuels Reduction Project as proposed by staff.

Dr. Horne commented that in the future, she would like to see such projects adopted using the environmental restoration findings.

Note: Keith Dyas left the meeting at 10:10 a.m.



19. Report on Proposed Changes to the Timber Waiver and Development of a Memorandum of Understanding with the Tahoe Regional Planning Agency

Andrea Stanley gave a progress report on proposed revisions to the timber waiver and an MOU being drafted with TRPA staff regarding vegetation management in the Lake Tahoe Basin. Staff plans to schedule both items for Board consideration at the October 2008 meeting in South Lake Tahoe. Ms. Stanley gave a report regarding the Fuels and Vegetation Management Board Subcommittee held on July 23, 2008.

Addressing the Board: Mary Huggins and Christy Daugherty, CAL FIRE.

Mr. Jardine asked staff to look at hand thinning. He felt there is minimal impact and moving hand thinning to category 1a would be a real benefit. He also asked staff to consider moving hand piled for burn piles in an SEZ to category 1a. Mr. Jardine agreed with previous speakers that the current approach is a band aid approach and that a Basin Plan amendment is needed in the future.

Dr. Horne commented that all Lahontan Water Board members have been appointed by the Governor. She noted that the Subcommittee and Board members as a whole are overseeing the process of revising the timber waiver and are implementing the Governor's Executive Order. Dr. Horne acknowledged the severity of the problem and noted it will not be resolved overnight. She also noted that her comments at the Subcommittee meeting were intended to clarify and make the documents understandable. She asked staff to consider developing language that applies to the wildland urban interface where lives and property are at risk and noted there might be a need for a different policy for the wildland urban interface than for the forest in general.

21. Carson River Watershed Regional Floodplain Management Plan, Alpine County

Ed James, General Manager, Carson Water Subconservancy District gave introductory comments. Genie Azad, Certified Floodplain Manager and Watershed Coordinator for the Carson Water Subconservancy District, gave an overview of the draft Carson River Watershed Floodplain Management Plan.

Mr. Singer discussed floodplain management issues within the Lahontan Region.

Mr. Singer and Board members thanked Mr. James and Ms. Azad for their informative presentation. Don Jardine expressed appreciation for the long-term vision of the Carson Water Subconservancy District.



22. Reports by Chair and Board Members

Board members thanked staff for their hard work on the issues that came before the Board.

Dr. Horne gave a report about the July 15 TMDL scoping meeting she attended in Kings Beach. She noted she was encouraged by the dialogue between Water Board staff and those attending the meeting.

Mr. Clarke discussed the status of SB 1176 (Perata).

ADJOURNMENT

With no further business to come before the Board, the meeting adjourned at 11:10 a.m. on July 24, 2008.

Prepared by:

Laurie Applegate, Executive Assistant

Adopted:

