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BEFORE THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

Sierra Forest Legacy and Tahoe Group of the Sierra Club)	Petition for Review of Lahontan Regional Water Quality Control Board Action
)	Adopting Regional Timber Waiver
Petitioners,)	
)	
vs.)	
)	
Lahontan Regional Water Quality Control Board)	
)	
Respondent)	
_____	/	

Introduction and Summary

Pursuant to Water Code § 13320, Petitioners Sierra Forest Legacy and the Tahoe Group of the Sierra Club (Petitioners) hereby petition the State Water Resources Control Board (“State Board”) to review the final decision of the Lahontan Regional Water Quality Control Board (“Lahontan”) on May 14, 2009, adopting a Regional Timber Waiver (“2009 Waiver”) through the adoption of a mitigated negative declaration under the California Environmental Quality Act ("CEQA"). Pub. Res. Code § 21000 et seq.

The 2009 Waiver was not originally intended to apply to the Tahoe Basin. Instead, Lahontan’s intended waiver for the Tahoe Basin was its 2008 Waiver and MOU (“2008 Waiver”) with the Tahoe Regional Planning Agency (TRPA). Petitioners appealed Lahontan’s decision on the 2008 Waiver to the State Board, which appeal was denied without further evidentiary review on May 21, 2009.

At some point in the review process for the 2009 Waiver, Lahontan stated its intent to apply the 2009 Waiver to the Tahoe Basin should the 2008 Waiver be set aside or withdrawn for any reason. At this time, following the State Board’s denial of the Petitioners’ Petition, the 2008 Waiver is currently the applicable legal document for regulating water

quality impacts due to vegetation management activities in the Tahoe Basin. However, it is still possible at this time that the 2008 Waiver may in the future be withdrawn or set aside, in which case the 2009 Waiver may be applied to the Tahoe Basin.

Petitioners submit this Petition for the State Board to review Lahontan's adoption of the 2009 Waiver. The 2009 Waiver as applied to the Tahoe Basin would be an improvement over the 2008 Waiver, which provides little to no description of the monitoring that will occur in the Tahoe Basin under TRPA's jurisdiction. However, the 2009 Waiver still has the potential for significant impacts by eliminating forensic and effectiveness monitoring for use of mechanical equipment in sensitive environments. Further, in approving the 2009 Waiver through a negative declaration with inadequate analysis regarding the potential water quality impacts of the project, Lahontan violates CEQA by failing provide an adequate description of the project and environmental/regulatory setting, unlawfully deferring necessary analysis, failing to prepare an environmental impact report ("EIR"), failing to consider cumulative impacts and failing to consider the larger project at issue regarding fuel reduction in the Basin.

Petitioners agree that there is a need to streamline the permitting process for fuels reduction projects and appreciate Lahontan's efforts to improve its Regional Timber Waiver in the process. Were the 2009 Waiver, as it presently exists, to be applied in Tahoe, however, this would create a tremendous potential for regulatory confusion and potentially significant impacts to water quality and beneficial uses. Both of Lahontan's waiver approvals – the 2008 Waiver and the 2009 Regional Waiver – are part of a larger project currently being implemented in the Tahoe Basin over the next decade to conduct fuel reduction logging on approximately 68,000 acres.^{1/} The purpose of this larger project is streamline environmental review for fuel reduction projects in the Basin. However, in implementing such streamlined fuel reduction at such a massive scale, the agencies involved – including Lahontan – have an obligation to protect Tahoe's pristine environment and Lake clarity.

In this context, the 2009 Waiver does not provide adequate discussion of the implementation of the new Fuel Reduction Strategy covering 68,000 acres of logging in Tahoe and how water quality will be protected in the Basin. For example, the 2009 Waiver does not provide an adequate discussion of how Forest Service projects will be monitored. This lack of specific information is particularly problematic given that the recent 10,000 acre South Shore Project – a project for which Lahontan has functioned as a co-lead agency with the Forest Service – contains monitoring requirements that appear in conflict with the 2009 Waiver. Given that the Forest Service and Lahontan still appear to be negotiating the terms of a monitoring plan for the Tahoe Basin, the adoption of the 2009 Waiver appears premature.

The public is entitled to know how fuel reduction activities will be implemented and monitored to ensure that water quality in the Tahoe Basin is protected. Lake Tahoe has been

^{1/}See Lake Tahoe Basin Multi-Jurisdictional Fuel Reduction and Wildfire Prevention Strategy, pp. 5-6, http://www.fs.fed.us/r5/lbmu/documents/fuel-reduction-projects/10-year-plan/LTB_FUELS_PLA_N_12_13_2007.pdf.

designated as an Outstanding National Resource Waters (“ONRW”) in the Water Quality Control Plan for the Lahontan Region (“Basin Plan”), which means it is automatically subject to the antidegradation requirements under state and federal law that the ONRW’s water quality be maintained and protected.^{2/} However, Lahontan’s action, together with the 68,000 acres of vegetation management activities planned, has the potential to reduce Lake Tahoe’s water quality and adversely affect existing beneficial uses relating to environmental values in the Basin.

Petitioners thereby request that the State Board grant their Petition and set aside Lahontan’s approval of the 2009 Waiver until adequate information can be presented as to how water quality in the Basin will be protected. Petitioners also request an evidentiary hearing on their Petition based on the arguments summarized below, the evidence submitted to Lahontan, and any additional evidence of how vegetation management activities will be regulated in the Tahoe Basin and impacts they may be having.

1. Name, Address, Telephone Number and E-mail Address of the Petitioners.

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2. The Action or Inaction of the Regional Water Board Being Petitioned, Including a Copy of the Action Being Challenged or Any Refusal to Act, If Available.

Lahontan approved the 2009 Waiver on May 14, 2009. A copy of the 2009 Waiver (w/o attachments) is attached hereto as Exhibit 1.

3. The Date the Regional Water Board Acted, Refused to Act, or Was Requested to Act.

Lahontan approved the 2009 Waiver on May 14, 2009.

^{2/}See e.g., 40 C.F.R. § 131.12(a)(1), (3). See also Basin Plan, pp. 3-12 - 3-13.

4. Statement of Reasons Why Action Was Inappropriate or Improper.

Lahontan's 2007 Waiver, previously applicable to Tahoe, contains detailed monitoring requirements for high risk fuel reduction projects, including photo-point monitoring to ensure that mitigation measures have been effectively implemented and are functioning to avoid adverse water quality impacts. As discussed in Petitioners' comments (*see* Exhibits 2- 3, attached hereto), these requirements are critical to ensure that projects avoid significant impacts and that the oversight agency retain the ability to corroborate such compliance.^{3/}

The 2009 Waiver repeals these previous region-wide waiver monitoring requirements. Based on statements in the 2009 Waiver and conversations with Lahontan staff and officials, we understand that should the 2008 Waiver be set aside or withdrawn, the proposed 2009 Waiver will be applied to the Tahoe Basin. However, the proposed 2009 Regional Waiver makes a number of substantial changes to the existing 2007 Waiver that have the potential for significant impacts to water quality in the Basin that have not been adequately analyzed.

In the proceedings before Lahontan, Petitioners submitted substantial evidence supporting a fair argument that inadequate monitoring has the potential to lead to significant adverse impacts on water quality in the Basin. Under CEQA, this requires the preparation on an Environmental Impact Report (EIR) rather than a negative declaration, as Lahontan has prepared for this project. *See e.g., County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal. App.4th 1544, 1597 (“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”)

The potential lack of adequate monitoring on 68,000 acres of logging activities within the Tahoe Basin has the potential for long term adverse impacts to Lake Tahoe's water quality due to sediment, nitrogen and phosphorous discharge. This is a potential cumulatively considerable impact under CEQA, given that the Basin's waters are currently impaired for these pollutants. *See* 14 Cal. Code Regs. § 15355(b); *Communities For a Better Environment v. California Resources Agency* (2002) 103 Cal. App. 4th 98, 119 (“Guidelines section 15355 definition of cumulative impacts...turns on the impacts of both the project under review and the relevant past, present and future projects.”) *See also Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal. App. 4th 1019, 1026 (“EIR is inadequate for concluding that a project's additional increase in noise level of another 2.8 to 3.3 dBA was insignificant given that the existing noise level of 72 dBA already exceeded the regulatory recommended maximum of 70 dBA.”)

The potential that inadequate monitoring will lead to further impairment of Tahoe's waters also violates the Basin Plan's antidegradation provision, which identifies Lake Tahoe

^{3/}Lahontan's region-wide waiver monitoring conditions were adopted based on Lahontan's own recognition during the 2007 approval process that “vegetation management activities” such as those at issue in this proceeding have the potential for significant environmental impacts, particularly when conducted in sensitive areas such as steep hillsides or streamzones.

as an Outstanding National Resource Water and requires its water quality to be maintained and protected. *See e.g.*, 40 C.F.R. § 131.12(a)(3); Basin Plan, pp. 3-12 - 3-13. Lack of monitoring and review also has the potential for adverse effects on instream beneficial uses within the Basin's many streams and tributaries that may be harmed by stream zone logging with heavy equipment or in particularly sensitive areas. *See e.g.*, 40 C.F.R. § 131.12(a)(1); Basin Plan, pp. 3-12 - 3-13.

Further, Lahontan's discussion of the impacts of the 2009 Waiver are inadequate as applied to the Tahoe Basin, an area that was not initially intended to be covered by this project. For example, the project documents contain inadequate discussion of the environmental setting in Tahoe with regard to 1) the amount of fuel reduction projects planned over the next decade; 2) the current state of Lake Tahoe's water quality, including Lake clarity and current findings of the TMDL process; 3) how past monitoring in Tahoe has been conducted and Lahontan's review of that monitoring; 4) the impacts on water quality and Basin beneficial uses of recent fuel related projects such as the Angora Fire Hazard Tree Removal Project; 5) the Forest Service's and Lahontan's South Shore Project, and how the proposed 2009 Waiver requirements relate to how that project has been recently proposed in the draft EIS/EIR, particularly regarding monitoring issues; and 6) the current state of negotiations between the State Board and the Forest Service regarding amendments to the 1982 Management Agency Agreement (MAA) and updated monitoring requirements.

Under state law, Lahontan is the agency with oversight authority over activities affecting water quality. Lahontan has historically played a primary and critical role in ensuring that water quality and beneficial uses are protected in the Basin as projects in sensitive areas are implemented. Tahoe's water quality is currently impaired and discharges from the vegetation management activities proposed under the Waiver have the potential to further this existing significant water quality impact in the Basin. Given Lahontan's continuing primary responsibility over water quality in the Tahoe Basin, Lahontan cannot waive its regulatory authority without a full understanding and assurance of how the thousands of acres of vegetation management activities planned for the Tahoe Basin will avoid contributing to significant cumulative impacts to water quality.

Petitioners allege the following legal violations.

1. Violation of Water Code § 13269 due to:
 - a. Inadequate monitoring requirements for projects subject to the Waiver. Monitoring does not ensure that water quality and Basin Plan beneficial uses are protected.
2. Violation of CEQA due to:
 - a. Failure to provide adequate information about the existing regulatory setting or the project that is proposed.

- b. Unlawful segmentation of the larger project at issue, which is to respond to the fire commission recommendations and to establish streamlined and effective regulatory oversight for fuel reduction projects in the Basin.
- c. Unlawful deferral of formulation of mitigation necessary to meet Basin Plan requirements and avoid significant impacts under CEQA, including establishment of monitoring requirements that will ensure water quality and habitat are protected.
- d. Failure to prepare an EIR for the project despite substantial evidence supporting a fair argument that the changes in monitoring requirements instigated by the 2009 Waiver have the potential for significant impacts on water quality and sensitive habitats in the Basin.
- e. Failure to assess the cumulative impacts of the 2009 Waiver in combination with foreseeable future projects in the Tahoe Basin.
- f. Failure to adopt monitoring and adaptive management measures that will ensure that information obtained through monitoring is incorporated into ongoing projects in the Basin over the next decade.

See Petitioners' comments to Lahontan dated February 9, 2009 and May 8, 2009, Exhibits 2-3, attached hereto.

These comments include the following specific points.

a. Lack of Adequate Discussion how Forest Service Projects Will Be Regulated in Tahoe

The 2007 Waiver required effectiveness and forensic Monitoring according to the Monitoring and Reporting Program (MRP) for Forest Service projects in high risk areas such as steep slopes and stream zones. The 2009 Waiver changes the default monitoring requirement for Forest Service projects from the MRP to the Forest Service's BMPEP except for watersheds above the threshold of concern (TOC) or which drain into a 303(d) listed waterbody. The 2009 Waiver does not clarify that this means that Forest Service projects in high risk sites will be required to conduct forensic and effectiveness monitoring for all watersheds in the Basin.

Lahontan's Response to Comments states that Lahontan would be interpreting the 2009 Waiver as requiring forensic and effectiveness monitoring at high risk sites on all watersheds draining into the Lake. However, as recently demonstrated by the South Shore DEIS, and pp. 4-2 – 4-3, Lahontan's and the Forest Service's current approach to monitoring does *not* require heightened monitoring for all Basin watersheds, and in fact limits such monitoring in that project to only 3 out of 18 listed watersheds. See DEIS, p. 3-108, Table

3-68. Thus, a legitimate question is raised how the 2009 Waiver will actually be implemented on the ground, as opposed to explained in a Responses to Comments. If the Forest Service will in fact be regulated on a TOC basis, as proposed in South Shore, this represents a major change from the 2007 waiver and a potentially significant impact under CEQA.^{4/}

A second problem is that, even if the TOC approach is not applied in the Basin, no information is given how Lahontan and the Forest Service intend to conduct monitoring at "high risk" sites. No information is provided about how many sites will be monitored, whether monitoring will be applied to all streamzones and steep slopes, or just a small subset, or what kind of monitoring will in fact be conducted. The 2009 Waiver repeals waives prior forensic and effectiveness monitoring contained in the 2007 Waiver in favor of vague proposals to work out some sort of agreement with the Forest Service, which the record shows has been recalcitrant in conducting monitoring beyond its BMPEP. This is a substantial change from the 2007 Waiver, which previously required affirmative action by Lahontan before the Forest Service could avoid its monitoring obligations under the MRP.

We believe the 2009 Waiver's presentation of how Forest Service projects will be monitored is inadequate and thus Lahontan's Waiver approval fails as an adequate informational review under CEQA. *See e.g., Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 ("If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [citations omitted.] The EIR process protects not only the environment but also informed self-government.")

b. Mechanical Treatments in Streamzones

The 2009 Waiver proposes to dispense with forensic and effectiveness monitoring for projects utilizing mechanical treatments in streamzones in the Basin, so long as the equipment does not exceed 13 psi for granitic soils and 10 psi for all other soil types. This is a significant change from the 2007 Waiver, which required forensic and effectiveness monitoring for any mechanical treatments in SEZs.

^{4/}As Petitioners' expert noted in the administrative proceedings, "logging activities on steep slopes and within stream zones have the potential to discharge substantial amounts of sediment. Sediment sources are not dependent upon the creation of impermeable surfaces, therefore establishing whether monitoring should occur or the type that is needed should not be based upon this calculation. For example, areas of landslides that are not necessarily steep, can be mobilized by changes in the drainage network that are caused by road ditches and stream crossings. Additionally, just the loss of interception can change the amount of groundwater in the soils and timing at which saturation occurs. These changes combined with loss in root strength that would be associated with logging or thinning operations can alter the soils resistance to sliding and to surface erosion." See Sup. Collins Decl. submitted with Petitioners' May 9, 2009 Comments.

The use of mechanical equipment in sensitive stream zones has the potential to cause erosion and pollution discharge. (See 2007 Waiver comments and attached Exhibits; Supp. Collins Decl. attached to Petitioners' May 8, 2009 Comments.) Lahontan's March 2008 Pollutant Reduction Opportunity (PRO) Report supports the idea that sediment loading may occur from logging activities in sensitive areas:

Developing and evaluating PCOs for forested areas (Setting C) was more difficult because there is very little measured data from the Tahoe region that could be used to assess the impacts of forest thinning and fuels management treatments. However, fuels-reduction treatments are planned for much of the forested portion of the Tahoe Basin in the near future. Fuels treatments range in intensity from hand crews, to prescribed fire, to mechanical harvesting systems; their potential impacts on runoff and erosion processes in the Tahoe Basin are poorly understood. PCOs for forested areas include many of the same treatments used on roads and ski slopes and are aimed at mitigating any impacts of forest management treatments and reducing loading from areas that have been disturbed by past logging activities (such as abandoned roads and trails).

PRO Report, p 176. The PRO Report makes an assumption that relatively undisturbed forested upland areas will not contribute substantially to overall sediment loading due to the existing restrictions on logging on steep slopes and in SEZs:

From a sediment or nutrient-loading analysis standpoint, forest management is wrought with uncertainty. Depending on the specific treatments applied and local physiographic factors (soil type, slope angle, soil moisture/seasonality), ground-based mechanized thinning and fuels treatments have the potential to increase runoff and erosion, at least at the local scale. However, given the types of low-impact treatments being employed and planned in Tahoe Basin fuels management efforts (primarily hand treatment and CTL systems) and regulatory limitations on mechanical treatment on steep slopes and SEZs, fuels treatments are unlikely to increase sediment and nutrient loading at the subwatershed scale (the scale of this analysis).

Id., p 184. The 2009 Waiver changes the existing restrictions of the 2007 Waiver for logging on steep slopes and in streamzones by allowing for mechanical treatments without the monitoring as previously required. In approving this change through the adoption of a negative declaration, the 2009 Waiver violates CEQA and potentially undermines Lahontan's ability to comply with its own Basin Plan objectives.

The 2009 Waiver documents state that Lahontan staff have assessed the impacts of projects utilizing mechanical equipment at these psi's and found that no significant impacts occurred. However, based on this finding, Lahontan proposes to waive monitoring requirements for such projects. Thus argument fails for at least two reasons.

First, Lahontan did not actually provide any detailed information or discussion

regarding the context in which staff reached their conclusions about these projects as part of the negative declaration circulated for review or the subsequent circulation of the 2009 Waiver in the spring of 2009. In its response to comments, Lahontan did provide more information about the underlying studies, but this information was not produced until after the close of public comment on the Waiver.^{5/} On the Heavenly SEZ study, Lahontan refers to “follow-up evaluations,” which, however, were not produced in the public review process.^{6/}

The lack of presented information – as opposed to unsupported statements in the 2009 Waiver documents -- means that this review process does not satisfy CEQA standards for information. Here, the public was unable to evaluate the scientific basis for Lahontan’s conclusions, or even to understand what measurements have been taken.

Second, a finding that, at one project site, no significant water quality impacts were observed – even if supported with documented evidence -- does not mean that the project activities reviewed still do not have the *potential* to cause adverse water quality impacts across the range of circumstances that may occur in different Tahoe Basin watersheds. As stated by the Supplemental Collins Declaration:

In my opinion, [mechanical operations in stream zones have] the potential for significant impacts. It is common knowledge and well documented in the literature that ground-based equipment in sensitive stream zone areas has the potential to cause erosion and sediment discharge. More focus should be put on keeping equipment out of the stream zone or at least assessing what the equipment is actually doing in the stream zone that could cause impacts. Too much emphasis is placed on potential changes in permeability rather than assessing all processes that could deliver sediment to the stream and route it to Lake Tahoe.

^{5/}Lahontan provided no evidence for public review to support its assertions either for a 13 or a 10 psi limit. On the overall 10 psi limit, Petitioners requested Lahontan to include the environmental documentation supporting its purported findings. Lahontan’s subsequent recirculation of the 2009 Waiver in April 2009 included references to the (Lake Valley Fire Protection District, 2006. Christmas Valley 3 Defense Zone Project), but still failed to include the actual report that is referenced as the supporting information for this environmental criteria, nor any details regarding the project and why 10 psi is found to have no impact on sensitive areas.

^{6/}Lahontan referred to the results of the Heavenly Creek Demo Project as such evidence but never provided data or even reference to the documentation that would support this conclusion. For example, the Heavenly Creek SEZ Demo Final Report (March 2008) states that forensic and effectiveness monitoring will occur in 2008 when the snow has melted and the first major summer or fall rain storm event occurs, with photos to determine whether visible signs of erosion, sediment transport, or deposition has occurred as a result of project activities. However, the Forest Service's BMPEP Annual Report for 2008 does not include Heavenly Creek. In addition, the Final Report states that data collections for Ksat, bulk density, and soil cover will be undertaken in 2012, to evaluate the recovery rates in these parameters, and follow-up. Id. p. 9.

Collins noted that certain granitic soils have the potential for erosion and sediment deposition:

I do not agree that use of mechanical equipment on granitic soils makes impacts less than significant. In my experience, certain types of granitic soils are highly susceptible to erosion due to ground based equipment use, especially in areas with decomposed granitic bedrock and/or granitic soils that have abundant fine sediment, which are often referred to as grus.

The point of monitoring is to ensure that different projects, applied across a heterogenous landscape, will either have no significant water quality impacts, or, if they do, those impacts will be quickly identified, corrected and avoided in the future. Thus, some level of post-project monitoring is still necessary in sensitive areas, even if results from single projects show that impacts can be avoided using effective BMPs. Further, without the long-term data from either project discussed, it is not yet possible to confirm that actual conditions behaved as predicted by models, which are inherently uncertain. Lahontan itself has acknowledged this point in its comments on the Forest Service's BMPEP:

The BMPs should be re-evaluated after major storm events and years of use...to determine the true effectiveness of the management measure over the long term. BMPs are designed to minimize the effect of non-point source pollution long after the individual projects are completed. In order for the analysis to provide a true understanding of the effectiveness of an individual BMP, follow up inspections that evaluate the BMP's long term durability and applicability are necessary.

See Petitioners' September 17, 2008 Comment Letter on 2008 Waiver, Ex. 13.^{7/}

c. Elimination of Monitoring for Salvage and Rehabilitation Projects

The 2009 Waiver appears to eliminate all monitoring requirements for post-fire salvage and rehabilitation logging projects. This change has the potential for significant environmental impacts:

Salvage logging has the potential to cause erosion and discharge to watercourses. As stated above, the mechanical disturbance of the fine root network can make the bare surface soils much more susceptible to surface erosion. Soils influenced by hot fires, where most all the organic material near the surface has been removed are much more likely to experience erosion from raindrop impact and surface erosion. Sediment entrained by the processes by overland flow over the bare mineral surface soil has a much greater potential for being delivered to a stream. Further, post-fire rehabilitation projects are not necessarily benign and may in fact be the source of increased pollution. Many erosion control projects have created sediment sources, rather than

^{7/}These prior comments and exhibits have all been incorporated by reference into the record for the 2009 Waiver.

reduce them.

See Supp. Collins Decl., Petitioners' May 8, 2009 comments. Collins also notes:

Following fire, but even before the first rainfall, natural sediment supply rates into streams can be quite high from dry ravelling of soil from the inner gorge of stream canyons. After rainfall, especially in areas that have hydrophobic soils, pervasive rill networks can occur over vast portions of the hillsides and can directly supply fine surface sediment to the stream network. Without effectiveness and forensic monitoring, these natural geomorphic responses might be difficult to distinguish from man-related project causes in areas that are treated for post fire erosion control.

An example of how post-fire salvage operations may have adverse effects to water quality in the absence of monitoring is provided by recent photos of the Angora Fire USFS System Road and Trail Hazard Tree Removal Project, which conducted tree removal operations following the Angora Fire. Petitioners' submitted these photos to demonstrate how the lack of any follow-up forensic and effectiveness monitoring by Lahontan has the potential for significant impacts to water quality and Basin beneficial uses that will not be identified.^{8/}

Lahontan's Response to Comments claims that the 2009 Waiver Category 3 is "only for post fire erosion control and rehabilitation projects and activities to reduce threats to life or property." In prior comments to Lahontan, Petitioners agreed that in true "emergency" situations, monitoring requirements may be inappropriate. However, the language of the Waiver does not limit Category 3 in any meaningful way to true emergencies. Lahontan acknowledges that "Water Board staff decided to remove the timeline under Category 3, since some erosion control activities may occur at any time post-fire and we want to allow these activities to move as quickly as possible." (*See Responses to Comments.*) Petitioners have not objected to allowing necessary post-fire projects to go forward, but this does not mean that

^{8/}The record in this case includes a number of photos that were taken of the Angora restoration site, which shows removal of trees from the actual streambed, and substantial erosion potential. Petitioner Tahoe Group of the Sierra Club raised this issue during the public comment process for this project, which apparently was ignored by the Forest Service. *See Comment Letter of Sierra Club dated August 10, 2007* ("The map that is available for the Hazard Tree Project does not appear compatible with the map that accompanies the ATM for the Angora/Twin Peaks Transportationshed. (April 2003). Using the map from the ATM roads and trails, it appears that this area contains SEZs consisting of a perennial stream and nine intermittent streams or drainages, most of which stay damp much of the year. The scoping document does not reveal how many stream crossings will be constructed for the logging equipment in the area, how logging will be undertaken of trees that are either hazard trees or recently felled fire-killed trees, or how close to the damp areas of these SEZs the heavy equipment will operate.")

no monitoring should be required of such projects where no true emergency exists.^{9/}

Given the potential for adverse water quality impacts to occur, there does not appear to be a clear rationale why effective monitoring cannot be conducted as part of all non-emergency post fire projects. The requirement to conduct monitoring does not prevent the project from going forward. The project documents do not spell out the need to exempt these projects from monitoring review.

d. Elimination of Notification and Monitoring for Hand Thinning Projects in Sensitive Stream Zones

The 2009 Waiver eliminates all notice and monitoring requirements for hand-thinning projects in stream zones, even for projects conducted in wet soil conditions. Eliminating monitoring for all such projects has the potential for significant impacts to water quality and beneficial uses:

Although non-mechanical logging within stream zones is more benign than mechanical operations, it too has the potential to lead to significant sediment discharge due to the removal of vegetation that stabilizes the bank channel. After logging, thinning, salvage operations, or other fuel modification activities that cut trees there is a subsequent loss in soil strength to resist surface erosion and landsliding. This is caused by the decay and loss of small and large roots. For example, studies have shown that large roots of conifers decay in about 5-7 years (Coats and Collins, 1981). This is before roots of germinated seedlings can contribute significant added cohesion. At this point, forest soils dominated by conifers are at their weakest to resist mass wasting from landslides. Continued effectiveness monitoring is needed to capture the potential effects of these land use practices, otherwise significant negative impacts caused by land management might go undetected. These kinds of impacts that provide fine sediment to any portion of the stream network, even along small headwater ephemeral channels can influence any particular designated "class" or size of downstream channel.

See Supp. Collins Decl. submitted with Petitioners' May 8, 2009 comments.

e. Elimination of Monitoring for Pile Burning in Water Buffer Zones

The 2009 Waiver allows for pile burning in water buffer zones without monitoring.

^{9/} Petitioners May 8, 2009 comments noted that "[w]ithout the 120 day timeline, and without any criteria for what constitutes an "emergency" projects such as the USFS System Road and Trail Hazard Tree Removal Project, which did not pose an 'imminent threat' in the fall of 2008 when it was actually implemented, will be entitled to an exemption from even implementation monitoring, thereby leading to potentially significant water quality impacts." *See also* Angora hazard tree removal photos submitted with comments.

Lahontan fails to include the analysis that serves as the basis for these parameters. No evidence was presented in the project documents to demonstrate that this activity did not have the potential for adverse impacts to water quality and beneficial uses. In response to comments, Lahontan stated, “because of the size and number and area extent of piles allowed without mitigation or monitoring, water and soil impacts will remain less than significant based on Water Board staff professional judgment, experience and observations.”

This reasoning is flawed however, because it purports to make a comparison between the amount of total impact and that caused by pile burning. However, as discussed, Tahoe is an impaired water body with cumulatively significant impacts for pollutant loading. Thus, Lahontan cannot determine that pile burning does not have the potential to adversely affect water quality and that no monitoring is therefore necessary. *See e.g., Communities For a Better Environment v. California Resources Agency, supra*, 103 Cal. App. 4th at 119.

f. Impacts from Watercourse Crossings

The 2009 Waiver allows projects that propose stream crossings not more than every one-half mile to avoid forensic and effectiveness monitoring. In response to comments, Lahontan states: “Less than significant water quality impacts will result from driving across a dry ephemeral channel where the number of crossings are limited and no disturbance of stream banks occur.”

The project documents do not provide any evidence that this is true, nor does Lahontan’s response explain why forensic monitoring would not be required to ensure that disturbance to stream banks does not occur. As set forth above, Lahontan cannot find these impacts insignificant and thus worthy of a monitoring exemption given that Tahoe is already experiencing significant impacts from cumulative discharges of pollutants.

g. Lack of Defined Triggers to Avoid Cumulatively Significant Impacts

The proposed waiver states that the discharger “may also include project triggers or thresholds where activities will stop if threshold is reached.” (See Category 6, Condition 5). In response to Petitioners’ comments, Lahontan added the following language:

The discharger will propose appropriate and quantifiable triggers. However, if the discharger does not propose trigger(s), or fails to propose trigger(s) adequate to prevent discharge of wastes to waterbodies, Water Board staff will work with the discharger to develop appropriate trigger(s).

See 2009 Waiver revisions, p. 5. While this language is clearly an improvement from the draft Waiver language, it still leaves open the possibility that projects may go forward over time and cause significant cumulative impacts without programmatic corrective action. For example, the trigger only applies to Category 6 projects, and thus allows the vast majority of logging activities to occur without any trigger that will lead to changes to avoid significant

adverse impacts to water quality and beneficial uses. Further, the trigger concept only arises where an applicant chooses to apply for a prohibition exemption allowing for discharge into Tahoe's waterbodies. In the majority of cases, where an applicant would not make such application, there is no "trigger." Finally, the added language does not provide any information about how triggers will be coordinated with information provided. What will be the trigger to force changes to occur on the ground? What parameters will be monitored in order to provide data for the "trigger?" How will the monitoring required under the 2009 Waiver produce this type of information? How will the trigger be coordinated with Lahontan's monitoring program to ensure that cumulatively significant impacts are avoided?

Under law, Lahontan has the responsibility to formulate adequate mitigation, which may include a monitoring plan that will ensure that adverse impacts do not occur over the implementation of the project and thereafter. *See e.g.*, Pub. Res. Code § 21081.6.(a)(1) (CEQA requires that mitigation measures be enforceable, as set forth in a specific reporting or monitoring program, which program "shall be designed to ensure compliance during project implementation.") This will prevent project impacts by stopping harmful activities before they cause significant harm (as intended by the concepts of trigger values and adaptive management). Under CEQA, the public has a right to review this program prior to project approval. Here, no information is given how Lahontan's trigger program will function on the ground, how information will be collected and communicated, and what parameters Lahontan will use to determine whether corrective action is necessary. This is not adequate under CEQA. *See Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1117-1118 ("[W]e conclude that here the County has not committed itself to a specific performance standard. Instead, the County has committed itself to a specific mitigation goal.")

5. How the Petitioner Is Aggrieved.

Petitioners are public interest organizations dedicated to ensure that activities with the potential for adverse environmental impacts are regulated according to law. Each Petitioner has participated in numerous public processes for the protection of water quality and sensitive habitats in the Tahoe Basin. Petitioners' members will be adversely affected by the lack of adequate regulation over fuel reduction projects in the Tahoe Basin.

6. The Action the Petitioner Requests the State Water Board to Take.

Petitioners request that the State Board grant their Petition and set aside Lahontan's approval of the 2009 Waiver until such time as Lahontan has conducted a full analysis of how the impacts of timber projects will be monitored in the Basin, which agency or agencies will oversee that monitoring, and how the data obtained will be translated into corrective action on the ground to ensure the Tahoe's water quality is protected.

7. A Statement of Points and Authorities for Any Legal Issues Raised in the Petition, Including Citations to Documents or Hearing Transcripts That Are Referred To.

See Section 4 above. Petitioners also attach their two principal comment letters submitted to Lahontan during the public review process. (See Exhibits 2-3, attached to this Petition.) These comments contain citations and references to exhibits that were also submitted and are part of the record.

8. A Statement That Copies of the Petition Have Been Sent to the Regional Water Board and to the Discharger, If Different from the Petitioner.

A true and correct copy of this petition was mailed via First Class mail on June 12, 2009 to Lahontan.

9. A Statement That the Issues Raised in the Petition Were Presented to the Regional Board Before the Regional Board Acted, or an Explanation of Why the Petitioner Could Not Raise Those Objections Before the Regional Board.

The substantive issues or objections raised in this Petition were presented to the Lahontan during the period for public comment and/or prior to Lahontan's approval of the 2009 Waiver. Petitioners submitted two sets of comments on the project.

10. Petitioners Request a Hearing on Their Petition

Petitioners request an evidentiary hearing on their Petition based on the arguments summarized below, the evidence submitted to Lahontan, and any additional evidence of how vegetation management activities will be regulated in the Tahoe Basin and impacts they may be having.

Respectfully submitted via electronic and U.S. mail.

DATED: June 12, 2009

By: 
Michael W. Graf
Attorney for Petitioners

Attachments:

- Exhibit 1: Regional Waiver Adopted on May 14, 2009 (w/o attachments)
- Exhibit 2: Petitioners' Comments on Regional Waiver dated February 9, 2009
- Exhibit 3: Petitioners' Comments on Regional Waiver dated May 8, 2009

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

BOARD ORDER NO. R6T-2009-0029

CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS

FOR

**WASTE DISCHARGES RESULTING FROM
TIMBER HARVEST AND VEGETATION MANAGEMENT ACTIVITIES
IN THE LAHONTAN REGION
"2009 TIMBER WAIVER"**

Modoc, Lassen, Plumas, Sierra, Nevada, Placer, El Dorado, Alpine, Mono, Inyo,
San Bernardino, Kern, and Los Angeles Counties

CONTENTS

- Section A: Findings.** Provides the legal and factual basis for the Timber Waiver.
- Section B: General Provisions.** Statements regarding waiver applicability, waiver effective and expiration dates, and liability.
- Section C: General Conditions.** Conditions that apply to projects regulated by this Timber Waiver.
- Section D: Timber Waiver Categories.** Category-specific eligibility criteria and conditions for activities regulated by this Timber Waiver.
1. Defensible space and construction activities
 2. Hand crew operations
 3. Post fire rehabilitation
 4. Activities that rely on existing roads & meet 10 criteria
 5. CAL FIRE-approved plans
 6. Activities that do not qualify for Categories 1 - 5
- Section E: Certification.** Statement of certification by the Executive Officer.
- List of Attachments** – Definitions, applications, monitoring and reporting forms

A. FINDINGS

WHEREAS the California Regional Water Quality Control Board, Lahontan Region (Water Board) finds:

1. California Water Code (Water Code) section 13260, subdivision (a) requires that any person (hereby referred to as "discharger") discharging waste or proposing to discharge waste (including but not limited to waste earthen and organic materials) as defined by Water Code Section 13050 that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Water Board a report of waste discharge containing information which may be required by the Water Board. Only persons proposing timber harvest and/or vegetation management activities that may potentially result in a discharge or threatened discharge of waste to waters of the state are subject to regulation by the

Water Board and need to apply for coverage under this waiver of waste discharge requirements (and waiver of the requirement to file a report of waste discharge) or file a report of waste discharge pursuant to California Water Code section 13260.

2. The Water Board has identified wastes associated with timber harvest and vegetation management activities (as defined in Attachment A and in this Order referred to as “activities”) as having a potential effect on water quality. Activities eligible for this Timber Waiver range from fuel reduction work conducted around existing structures to commercial timber harvest and vary in potential threat to water quality. For example, project characteristics such as method of tree removal, intensity and proximity of activities to surface waters, and the sensitivity of the area will influence the mitigation measures needed to ensure the activity will have a less-than-significant impact on water quality and the environment. The types of activities that are eligible for this Timber Waiver have been divided into six categories to address the diversity of activities and the associated scale of conditions. Segregating these activities into categories is intended to assist dischargers in identifying eligibility criteria and conditions that apply to their particular activity. Table 1 summarizes the six categories of activities eligible for the Timber Waiver.

Table 1: Summary of Timber Harvest and Vegetation Management Activity

Categories. Please note that this table supplies only a brief summary of the eligibility criteria, conditions, and requirements of each category, please refer to Section D. Timber Waiver Categories (pages 12-28 for more complete information). For a summary and timeline of the monitoring and reporting required for Categories 4, 5, and 6 please review Attachment P.

Category	Type of timber harvest and vegetation management activities	Notification, application, and monitoring requirements	Application processing timeline
1	Activities associated with defensible space, defense zone, forest fire prevention, and construction activities	No notification, application or monitoring.	None
2	Activities conducted by hand crews, including prescribed fire outside Waterbody Buffer Zones		
3	Planned post fire rehabilitation	Written notification within 7 days of initiation. No monitoring required as part of Timber Waiver.	

Category	Type of timber harvest and vegetation management activities	Notification, application, and monitoring requirements	Application processing timeline
4	Activities which rely on existing roads, meet 10 criteria, and may include winter period operations	Application, implementation monitoring and reporting, and Project Completion Form submittals required. Winter monitoring required if equipment is operated during the winter period.	Work may begin upon receipt of application by Water Board.
5	CAL FIRE – approved Timber Harvest Plan, Non-Industrial Timber Management Plans, or other CALFIRE Plans	Application, monitoring and reporting, and Project Completion Form submittals required.	
6	Activities that do not qualify for categories 1-5, and may include activities within 100-year floodplains or Stream Environment Zones	Application, monitoring and reporting, and Project Completion Form submittals required	Application submitted at least 30 days before beginning work.

3. The provisions of Water Code section 13260, subdivisions (a) and (c); section 13263, subdivision (a); or section 13264 subdivision (a) may be waived by the Water Board pursuant to Water Code section 13269 for a specific type of discharge if the Water Board determines, after any necessary meeting, that the waiver is consistent with the Water Quality Control Plan for the Lahontan Region (Basin Plan) and is in the public interest.
4. Water Code section 13269 includes the following provisions:
 - (a) The waiver may not exceed five years in duration, but may be renewed by the Water Board at any time.
 - (b) The waiver shall be conditional and may be terminated at any time by the Water Board.
 - (c) The conditions of the waiver shall include the performance of agency, individual, group, or watershed-based monitoring, unless waived because the Water Board determines that the discharges do not pose a significant threat to water quality.
 - (d) Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions.

- (e) In establishing monitoring requirements, the Water Board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based compliance and effectiveness monitoring efforts; the size of the project area; and other relevant factors.
 - (f) Monitoring results shall be made available to the public.
 - (g) The Water Board may include as a condition of a waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). (At the time of adoption of this Timber Waiver, the State Water Board has not established annual fee regulations with respect to timber harvest and vegetation management activities).
5. The Water Quality Control Plan for the Lahontan Region (Basin Plan) contains water quality standards and implementation measures for specific watersheds. Because of the high quality waters found in the Lahontan Region, additional conditions beyond current state and federal forestry-related regulations are included in this waiver to ensure protection of water quality and compliance with the Basin Plan. In the Lake Tahoe, Little Truckee River and Truckee River Hydrologic Units (HUs), the Water Board adopted waste discharge prohibitions to limit soil erosion and sediment delivery in and around surface waters and their associated floodplains and Lake Tahoe stream environment zones (SEZs). The Water Board has identified extremely fine sediment (less than 16 micrometers in size) to be the primary cause of clarity loss in Lake Tahoe and anticipates adopting a Total Maximum Daily Load for sediment and nutrient discharges to Lake Tahoe in 2010. The Water Board adopted a Total Maximum Daily Load for sediment discharge to the Truckee River in 2008 focusing on controlling sediment from roads and land disturbances. Therefore, this waiver adds additional conditions and requirements within the Lake Tahoe, Little Truckee River and Truckee River HUs to ensure compliance with the Basin Plan.
6. The Water Board recognizes the need statewide to address the current and growing threat of catastrophic wildfire. Decades of fire suppression have resulted in thick stands of trees and vegetation requiring thinning and in some cases, prescribed fire. Many of these activities need to occur in areas adjacent to waterbodies where there is a higher potential to adversely impact water quality than if the same activity was to occur away from a waterbody. Limited quantitative information about site specific effects of certain activities conducted in these areas are known. Similarly, the water quality effects from wildfire in these areas can be significant and, to some extent, may be estimated based on fire intensity and predicted hydrology. The Water Board recognizes a need for more information on the impacts and appropriate mitigation measures for equipment use and pile burning within 100-year floodplains of the Little Truckee River, Truckee River or Lake Tahoe HUs, or in Lake Tahoe HU SEZs. Research and demonstration activities are being proposed and the Water Board is allowing these activities to proceed under this waiver. To ensure these activities do not in themselves create a potentially significant effect on the environment, Water Board directs its staff to:

- (a) impose additional monitoring, such as quantitative monitoring of impacts to soils (compaction, infiltration rate, etc.), ground cover inventories, vegetation recovery, or water quality analysis (see Conditions 5 and 6 of Category 6);
 - (b) ensure plans include appropriate design features to prevent or limit impacts to water quality;
 - (c) impose specific environmental triggers or thresholds that must not be exceeded during implementation; and
 - (d) notify the public of projects requiring a prohibition exemption a minimum of ten days before such an exemption and coverage under this waiver is considered.
7. The Water Board finds that the results of the USFS-Lake Tahoe Basin Management Unit Heavenly Valley Creek Stream Environment Zone Demonstration Project (USFS-LTBMU, 2008) provide sufficient evidence that permanent disturbance of SEZs did not occur from the operation of 13 psi cut-to-length equipment on dry granitic soils. These results are sufficient for allowing future activities using this equipment on similar soils to proceed without requiring a Basin Plan prohibition exemption when monitoring to verify dry soil conditions occurs. Additionally, the results will be considered sufficient for use of the same or similar low ground pressure equipment elsewhere in the Lahontan Region.
8. Pursuant to Water Code section 13269, subdivision (a)(3), the Water Board may waive monitoring requirements for discharges that it determines do not pose a significant threat to water quality.
 - (a) For Category 1, the Water Board waives monitoring requirements. Category 1 covers only those activities:
 - i. conducted near structures, or in or near areas zoned as residential, commercial or industrial. The Water Board finds that these activities do not pose a significant threat to water quality due to their limited scale and typical location.
 - ii. conducted under a Forest Fire Prevention Exemption issued by the California Department of Forestry and Fire Protection (CAL FIRE) pursuant to California Code of Regulations, title 14, section 1038, subdivision (i). The Water Board finds that these activities do not pose a significant threat to water quality because of the CAL FIRE requirements that limit these activities.
 - iii. conducted under a Dead, Dying, Diseased Exemption issued by CALFIRE pursuant to California Code of Regulations, title 14, section 1038 (b) without exceptions to 1038 (b) condition nos. 6 or 9. The Water Board finds that these activities do not pose a significant threat to water quality because of the CAL FIRE requirements and the Water Board's additional restrictions on activities in waterbody buffer zones.
 - (b) For Category 2, the Water Board waives monitoring requirements. Category 2 covers only those activities that are conducted by hand crews and low-ground-pressure chippers, brush mowers, or similar equipment for onsite processing of

materials cut by hand crews. The Water Board finds activities that comply with the criteria and conditions for Category 2 do not pose a significant threat to water quality.

- (c) For Category 3, the Water Board waives monitoring requirements. Category 3 applies only to those activities conducted for post-fire rehabilitation, and covers activities to minimize threats to life, property, water quality, and natural and cultural resources. These activities are either limited in scope or specifically intended to control erosion and sedimentation. The Water Board finds activities conducted under Category 3 do not pose a significant threat to water quality.
9. On February 14, 2007, in accordance with Water Code section 13269, the Water Board adopted Resolution No. R6T-2007-0008 which revised the previous conditional waiver of waste discharge requirements for discharges related to timber harvest activities in the Lahontan Region (Resolution No. R6T-2003-0001). The Water Board is considering a revised Timber Waiver at this time to address:
- (a) requests made by the Water Board,
 - (b) requests made by the regulated public and agencies, and
 - (c) the May 2008 Proclamation by the Governor of California encouraging the Water Board to consider recommendations made by the California-Nevada Tahoe Basin Fire Commission to implement actions to improve planning and streamline regulatory processes for fuel reduction activities following the 2007 Angora fire in South Lake Tahoe.
10. Certain terms used in this Timber Waiver have a specific, regulatory definition. The definition of these terms as listed in Attachment A may differ from common, dictionary definitions. All other terms shall have the same definitions as prescribed by the California Forest Practice Rules (California Code of Regulations, title 14, section 895.1 et seq.), Public Resources Code section 4528, subdivision (f), and the Porter-Cologne Water Quality Control Act (Water Code section 13000 et seq.). Definitions contained in Water Code Section 13050(d) controls for the purpose of the Timber Waiver.
11. "Discharger" means the landowner(s), any duly authorized representative of the landowner(s), and anyone working on behalf of the landowner(s) in the conduct of timber harvest and vegetation management. Discharger includes any "person" as that term is defined by Water Code section 13050, subdivision (c).
12. The Water Board adopted the Water Quality Control Plan for the Lahontan Region (Basin Plan) that establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the state and waste discharges to waters of the state within the Lahontan Region. The Basin Plan contains water quality objectives developed to protect the waters for the listed beneficial uses. The factors in Water Code section 13241, including economic

considerations, were considered as required during the development of water quality objectives. Prohibitions, provisions, and conditions contained in this Timber Waiver implement these previously developed water quality objectives. Compliance with water quality objectives will protect the waters for beneficial uses as identified in the Basin Plan.

13. State Water Board Resolution No. 68-16 ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") requires that the Water Board regulate discharges of waste to waters of the state to achieve the highest water quality consistent with maximum benefit to the people of the state. It further requires that dischargers meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the state will be maintained. This Timber Waiver is consistent with Resolution No. 68-16 because it requires compliance with applicable water quality control plans, including applicable water quality objectives, prohibits the creation of pollution or nuisance, and sets forth conditions that require the implementation of additional management practices (in addition to those required in the California Forest Practice Rules [California Code of Regulations, title 14, section 895.1 et seq] and U.S. Forest Service Best Management Practices guidance manuals) to assure protection of beneficial uses of waters of the state and maintenance of the highest water quality consistent with maximum benefit to the people of the state.
14. The Timber Waiver is consistent with the Basin Plan and is in the public interest as described below:
 - (a) Compliance with the conditions of the Timber Waiver will result in protection of water quality.
 - (b) Without the Timber Waiver, dischargers would be required to submit a report of waste discharge and wait for up to 140 days for the Water Board to prescribe individual waste discharge requirements. Due to limited staff resources, the Water Board would be unable to prescribe requirements in every case, allowing activities to move forward after a lengthy delay without Water Board permit. The Timber Waiver is a regulatory option imposing enforceable conditions that can be used by the Water Board to address a greater percentage of timber harvest activities, while allowing limited resources to be directed to the activities with greatest water quality risk.
 - (c) Forest fuel hazard reduction efforts have increased statewide to address the current and growing fire threat from decades of fire suppression. This revised Timber Waiver will respond to the need for expedited permitting for lower-impact fuels hazard reduction and forest enhancement activities, while still maintaining water quality protection through conditions and a monitoring program (under certain circumstances) as described in the Timber Waiver. This approach balances the need to reduce fire risk quickly while ensuring appropriate management practices and mitigation for water quality impacts are still implemented.

- (d) The Timber Waiver contains conditions requiring compliance with monitoring and reporting programs for some categories of activities based on the level of potential threat to water quality pursuant to Water Code section 13267, subdivision (b)(1). The required monitoring will assist in the protection of water quality and in the verification of the adequacy and effectiveness of Timber Waiver conditions pursuant to Water Code section 13269, subdivision (a)(3).
 - (e) The Timber Waiver contains conditions that require compliance with the Basin Plan.
 - (f) The Timber Waiver prohibits the creation of pollution, contamination or nuisance as defined in Water Code section 13050.
 - (g) Violations of Timber Waiver conditions are subject to enforcement remedies including, but not limited to Water Code section 13350 in the same manner as enforcement of waste discharge requirements.
 - (h) Water Board staff will continue to participate in the pre-harvest review of proposed timber activities under the California Forest Practice Act Rules and Regulations. This provides a process for the incorporation of water quality protective measures into Timber Harvest Plans beyond those required by the California Forest Practice Act Rules and Regulations.
15. This Timber Waiver shall not create a vested right to discharge waste and all such discharges shall be considered a privilege, as provided for in Water Code section 13263, subdivision (g). The Water Board Executive Officer may terminate the applicability of the Timber Waiver described herein to any activity at any time when such termination is in the public interest and/or the activity could affect the quality of waters of the state for beneficial uses.
16. The Water Board has prepared a Mitigated Negative Declaration with regard to the Timber Waiver in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) and state CEQA Guidelines (California Code of Regulations, title 14, section 15000 et seq.), and has considered the Mitigated Negative Declaration and determined there will be no significant adverse impacts to the environment from waiving waste discharge requirements for the categories of activities specified herein. The Water Board hereby certifies the Mitigated Negative Declaration for this Timber Waiver. The Executive Officer shall file all appropriate notices.
17. The Water Board held a public hearing on May 14, 2009, in South Lake Tahoe, California, and considered all evidence concerning this matter.

IT IS HEREBY ORDERED that any discharger meeting applicable eligibility criteria and requirements for activities in the Lahontan Region regulated by this Timber Waiver must comply with the General Provisions and all applicable general and category-specific conditions of this Timber Waiver, as set forth below.

B. GENERAL PROVISIONS

1. Pursuant to Water Code section 13269, subdivision (a), the Water Board waives requirements to submit reports of waste discharge and obtain waste discharge requirements for persons proposing or conducting activities which meet the eligibility criteria and comply with the conditions and general provisions set forth in this Timber Waiver.
2. The Water Board anticipates that most activities will proceed under a single category of the Timber Waiver. However, if a project is phased, or divided geographically, such that portions qualify under Category 1, 2, or 3; and other portions qualify under Category 4, 5, or 6; the discharger has the option of enrolling such phases or portions under different categories. Water Board notification is only required for the portions of projects or activities that qualify under Category 4, 5, or 6.
3. The Water Board does not waive the filing of a report of waste discharge or waive waste discharge requirements for persons proposing activities with impacts that are not mitigated to less-than-significant levels, such as those identified in a California Environmental Quality Act environmental impact report, or a National Environmental Policy Act or Tahoe Regional Planning Agency environmental impact statement. Not all timber harvest and vegetation management activities proposed in the Lahontan Region will be eligible for this Timber Waiver. Dischargers proposing activities that are not eligible for this Timber Waiver must file a report of waste discharge with the Water Board pursuant to Water Code section 13260.
4. This Timber Waiver shall become effective on May 14, 2009, and shall expire on May 14, 2014, unless terminated or renewed by the Water Board. Discharges regulated under this Timber Waiver are not authorized, and waste discharge requirements are not waived, after May 14, 2014, unless this Timber Waiver is renewed by Water Board action.
5. Discharges regulated under the 2007 Waiver of Waste Discharge Requirements for Timber Harvest Activities (Resolution No. R6T-2007-0008) may continue or proceed under that waiver until it expires on February 14, 2012, or may choose to re-apply under this waiver. After May 14, 2009, no new applications for permit coverage under Resolution No. R6T-2007-0008 (the 2007 Timber Waiver) will be accepted.
6. Timber harvest and vegetation management activities approved by the California Department of Forestry and Fire Protection under an Exemption or Emergency Notice may be eligible for coverage under Timber Waiver Categories 1, 2, 3, 4, or 6, depending on the scope of the proposed activities.

7. For activities conducted by the U.S. Forest Service, the Water Board finds that the U.S. Forest Service's Best Management Practices Evaluation Program (BMPEP) fulfills, in part, Timber Waiver monitoring requirements for Timber Waiver Categories 4 and 6. Monitoring requirements in addition to the BMPEP that must be undertaken by the U.S. Forest Service in order to satisfy all monitoring and reporting requirements include implementation monitoring, and focused "high risk" effectiveness monitoring for activities that are located in watersheds that are at or above the Threshold of Concern (as determined by the U.S. Forest Service's cumulative watershed effects analysis), or on the Clean Water Act section 303(d) list for sediment impairment. Additional details on specific U.S. Forest Service requirements are described in Attachment O, Monitoring and Reporting Program for U.S. Forest Service Activities Enrolled Under Timber Waiver Categories 4 or 6.
8. Dischargers may request a waiver of monitoring or propose an alternate monitoring and reporting program, subject to approval by the Executive Officer pursuant to Water Code Section 13269. The Executive Officer may impose additional or revised monitoring and reporting requirements pursuant to Water Code Section 13267. The Executive Officer may modify application, monitoring and reporting forms (Attachments C through M).

C. GENERAL CONDITIONS

1. Activities must be conducted in compliance with the Basin Plan, as amended, and other applicable laws, regulations and plans.
2. Wastes, including but not limited to, petroleum products, soil, silt, sand, clay, rock, felled trees, slash, sawdust, bark, pesticides, must not be discharged to surface waters or be deposited in locations where such material may discharge to surface waters. If discharge of wastes to surface waters occurs (not previously authorized by the Water Board), the discharger must notify the Water Board by telephone or email within 24 hours of detection of the discharge or the next business day, whichever comes first.
3. **Condition for activities within the Little Truckee River, Truckee River or Lake Tahoe HUs only:** If timber harvest and vegetation management activities are planned within 100-year floodplains of the Little Truckee River, Truckee River or Lake Tahoe HUs, or Stream Environment Zones or high erosion hazard lands (Bailey Land Classification 1a, 1c, or 2) of the Lake Tahoe HU, waste discharge prohibitions may apply. Review Attachment N to verify if any proposed activities would need a Basin Plan prohibition exemption prior to proceeding.
4. Activities conducted under the Timber Waiver must comply with the category-specific eligibility criteria and conditions, including monitoring and reporting requirements where specified. The discharger must conduct activities in accordance with information submitted in the application for waiver coverage, if one is required. For Categories 4, 5, and 6, the discharger must conduct monitoring and reporting pursuant to Water Code section 13267.

5. Timber harvest and vegetation management activities must be conducted in accordance with any mitigation and monitoring plans developed as part of complying with the California Environmental Quality Act, National Environmental Policy Act, California Forest Practice Act Rules and Regulations, and/or Tahoe Regional Planning Agency environmental analysis requirements.
6. Timber harvest and vegetation management activities subject to this Timber Waiver must not create a pollution, contamination, or nuisance, as defined by Water Code section 13050, subdivisions (k), (l), and (m).
7. All equipment used must be monitored for leaks, and removed from service if necessary to protect water quality. All spills must be immediately contained and spilled materials and/or contaminated soils must be properly disposed. An emergency spill kit adequate to contain spills that could result from onsite equipment must be at the project site at all times of equipment use.
8. This Timber Waiver does not permit any illegal activity, and does not preclude the need for permits or licenses which may be required by other governmental agencies, or other approvals by the Water Board such as discharges subject to a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act, including silvicultural point sources as defined in 40 Code of Federal Regulations, section 122.27. This waiver is not a substitute for state water quality certification under section 401 of the federal Clean Water Act which is required if a federal permit, such as a Clean Water Act section 404 permit, is required. Also persons practicing forestry must ensure that they maintain appropriate licenses and certifications pursuant to Public Resources Code section 752 and 753.
9. Pursuant to Water Code section 13267 subdivision (b)° and Water Code section 13269 subdivision (a), any proposed material change to the activities proceeding under the Timber Waiver must be reported to Water Board staff in advance of implementation of any such change. Material changes include, but not limited to:
 - (a) Change of project location or increase in size,
 - (b) The addition of winter period operations,
 - (c) Relocation or addition of watercourse crossings,
 - (d) Addition or relocation of roads or skid trails into a Waterbody Buffer Zone.
10. Any proposed material change to a project that does not result in a change in qualification under this waiver to a higher Category (e.g., Category 4 to Category 4) must be reported to the Water Board prior to implementation. Material changes to Category 6 projects shall not proceed until Category 6, Condition (1) is satisfied.

Any proposed material change to a project that results in a change in qualification under this waiver to a higher category (e.g., Category 2 to 4, or Category 4 to 6) must follow the notification requirements as if it was a new application.

11. A report of waste discharge must be filed with the Water Board pursuant to Water Code Section 13260 for any proposed material change to the activities proceeding under the Timber Waiver that would result in ineligibility for Timber Waiver coverage.
12. For the purpose of performing inspections and conducting monitoring, Water Board staff must be allowed reasonable access onto property where timber harvest and vegetation management activities are proposed, are being conducted, or have been terminated or completed. Inspections and monitoring may include sample collection, measuring, and photographing/taping to determine compliance with waiver conditions and eligibility criteria. Such inspections and monitoring are consistent with Water Code section 13267, subdivision (c), Public Resources Code section 4604, subdivision (b)(1), and other applicable laws.

Prior to, or immediately upon entering the property, Water Board staff will attempt to contact the site owner, persons performing the timber harvest and vegetation management activities, or other on-site representative(s) in order to inform the landowner or persons onsite of each inspection, and to discuss any safety considerations. If consent to access to property is unreasonably withheld, the Executive Officer may terminate the applicability of the Timber Waiver.

13. **Condition for Categories 4, 5, or 6:** For the purpose of observing, inspecting, photographing, digitally recording or video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with the eligibility criteria, conditions, or provisions of this Timber Waiver, dischargers agree to allow Water Board staff:
 - (a) Entry at any time, with or without advance notice, onto: (1) the real property where timber harvest and vegetation management activities covered under this Timber Waiver are proposed, are being conducted, or have concluded; and (2) any and all outdoor areas in the control or ownership of the discharger, in the vicinity of and downstream of timber harvest and vegetation management activities.
 - (b) Access to and permission to copy any record required to be kept under the conditions of this Timber Waiver, including, but not limited to, any self-monitoring records and/or equipment used to fulfill monitoring requirements.

D. TIMBER WAIVER CATEGORIES

Category 1: Defensible space, fire prevention, dead-dying-diseased tree removal, and construction activities

Eligibility Criteria:

Activities which may proceed under this category are those:

- (1) Undertaken to comply with state, local, or county defensible space requirements, including California Public Resources Code (PRC) section 4291 requirements, OR

- (2) On undeveloped lots (as defined in Attachment A) up to three acres in size for the purpose of fuels reduction and/or construction activities, OR
- (3) Conducted on public lands or with public funding (where a Registered Professional Forester, Federal Forestry Professional or Natural Resource Professional has developed and oversees the plan) to provide up to a 300-foot defense zone adjacent to subdivision boundaries, private parcel lot lines, and/or around structures and facilities (not including linear features such as roads, trails, or utility corridors), OR
- (4) Conducted under a CAL FIRE issued Forest Fire Prevention Exemption and in compliance with California Code of Regulations, title 14, section 1038, subdivision(i), OR
- (5) Undertaken to remove hazard trees in response to an imminent threat to life or property, OR
- (6) Conducted under a CALFIRE issued Dead, Dying, Diseased Exemption in compliance with California Code of Regulations, title 14, section 1038 (b) without any exceptions to Section 1038 (b) condition nos. 6 or 9.

Conditions:

Dischargers conducting activities meeting the eligibility criteria listed above are not required to notify, apply, or report monitoring to the Water Board if they comply with the following conditions:

- (1) Timber harvest and vegetation management activities must not cause or create erosion, destabilization of stream banks, temperature increases in waterbodies, disturbance to non-target Waterbody Buffer Zone vegetation, or concentrated surface runoff.
- (2) All areas disturbed by activities must be stabilized (as defined in Attachment A) at the conclusion of the activity or before the winter period as defined in Attachment A (whichever is sooner).
- (3) Equipment, including tractors and vehicles, must not be driven across watercourses (including dry ephemeral streams) except over existing watercourse crossings.
- (4) The operation of equipment, including tractors and vehicles, shall minimize soil disturbance to the maximum extent practicable.
- (5) No tractor, vehicle, or equipment use on saturated soils (see definition of saturated soil conditions in Attachment A).

- (6) All activities conducted under Category 1 must comply with the General Conditions of this Timber Waiver and meet one of the category-specific eligibility criteria listed above.

Category 2: Activities conducted by hand crews (defined in Attachment A) including thinning operations and prescribed fire

Eligibility Criteria:

Activities which may proceed under this category must meet all of the following eligibility criteria:

- (1) Activities shall be conducted by hand, except for low impact equipment, see Eligibility Criteria 2(a) below, to assist hand crew operations.
- (2) Tractor, vehicle, and equipment access shall be limited to existing roads with the following exceptions:
 - a. Low impact equipment with ground pressures less than 10 pounds per square inch (psi), such as chippers, brush mowers, or similar equipment for onsite processing of materials cut by hand crews and
 - b. Single passenger all-terrain vehicles (ATVs) or snowmobiles.
- (3) No construction of new landings or expansion of existing landings.

Conditions:

Dischargers conducting activities meeting the eligibility criteria listed above are not required to notify, apply, or report monitoring to the Water Board if they comply with the following conditions:

- (1) On existing roads, tractors, vehicles, low-ground-pressure chippers or other equipment shall not be operated during saturated soil conditions (as defined in Attachment A).
- (2) Operation of ATVs, chippers, brush mowers, or similar equipment off roads must always occur at distances greater than 25 feet from a waterbody and when at least one of the following conditions occurs:
 - a. Soils are dry (as defined in Attachment A), or
 - b. Hard-frozen soil conditions (as defined in Attachment A) exist, or
 - c. Snow depth is sufficient to not allow visible disturbance of soils, AND
- (3) Prior to the commencement of activities within Waterbody Buffer Zones (as defined in Attachment B), trees with a DBH¹ greater than 3 inches planned for removal, or trees designated for retention, must be marked (including a base mark below the cutline) or designated by written prescription and/or sample mark. However, all trees greater than 14 inch DBH planned for removal within Waterbody Buffer

¹ DBH (Diameter at Breast Height) means the diameter of the tree measured outside bark, at breast height, a point 4.5 feet (1.37 m) above ground level.

Zones must be marked (including a base mark below the cutline). Marking or written prescription must be done by either a:

- a. Registered Professional Forester or supervised designee,
 - b. Federal Forestry Professional (as defined in Attachment A) or supervised designee, or
 - c. Natural Resource Professional, or supervised designee.
- (4) Activities must not cause or create erosion, destabilization of stream banks, temperature increases in waterbodies, disturbance to non-target Waterbody Buffer Zone vegetation, or concentrated surface runoff.
- (5) All areas disturbed by timber harvest and vegetation management activities must be stabilized at the conclusion of operations or before the winter period as defined in Attachment A (whichever is sooner).
- (6) Chipped and masticated material must not be discharged to waterbodies, or be deposited in locations where such material may discharge to a waterbody. Within Waterbody Buffer Zones chipped and masticated material must not exceed an average of two inches in depth, with a maximum depth of four inches.
- (7) The following conditions apply to prescribed fire:
- a. If fuel breaks are constructed, effective waterbreaks must be constructed at the end of burning operations or prior to sunset if the National Weather Service forecast is a "chance" (30% or more) of rain within the next 24 hours.
 - b. Burn piles may be placed within Waterbody Buffer Zones under all of the following circumstances:
 - i. Piles must not be located within 100 year floodplain of any watercourse or within 25 feet of a watercourse.
 - ii. Piles must be limited in size to no more than 10 feet in diameter and 5 feet in height.
 - iii. No more than 10% of the area within the Waterbody Buffer Zone shall be covered in piles. This condition means less than 10% of the Waterbody Buffer Zone area subject to vegetation management activities.
 - iv. No placement or burning of piles within Stream Environment Zones in the Lake Tahoe HU.
 - c. Broadcast burning (as defined in Attachment A) is allowed as long as the prescription does not include active ignition within Waterbody Buffer Zones.
- (Note: Prescribed fire within Waterbody Buffer Zones that do not meet the above conditions may be authorized pursuant to an activity-specific notification under Category 4 or 6. See General Provision 2.)**
- (8) All activities conducted under Category 2 must comply with the General Conditions of this Timber Waiver and meet the category-specific eligibility criteria listed above.

Category 3: Post-fire emergency rehabilitationEligibility Criteria:

Activities implemented to minimize threats to life or property, and/or to stabilize soil and prevent unacceptable degradation to natural and cultural resources resulting from the effects of a wildfire and suppression of a wildfire. Activities conducted under a CAL FIRE Emergency Exemption do not qualify for Category 3.

Conditions:

- (1) Land owners or their representatives planning or conducting activities described above must contact Water Board staff in writing within seven (7) days of initiating these activities and provide the location and a description of the activities being conducted.
- (2) **Condition for activities within the Little Truckee, Truckee River or Lake Tahoe hydrologic units only:** If timber harvest and vegetation management activities are planned within 100-year floodplains of the Little Truckee River, Truckee River or Lake Tahoe HUs, or Lake Tahoe HU Stream Environment Zones, waste discharge prohibitions may apply. Review Attachment N to verify if any proposed activities would need a Basin Plan prohibition exemption prior to proceeding.
- (3) All activities conducted under Category 3 must comply with the General Conditions of this Timber Waiver and meet the category-specific eligibility criteria listed above.

Category 4: Activities which rely on existing roads, meet the following 10 criteria, and may include winter-period operationsEligibility Criteria:

Activities which may proceed under this category must meet the following eligibility criteria:

- (1) No construction of new roads.
- (2) No construction of new watercourse crossings except for the construction of over-snow watercourse crossings.
- (3) The use of up to one crossing of a dry Class III watercourse per ½ mile of stream length that does not disturb the bed or banks of the stream channel. Prior to use the crossing must be passable by standard production 4 wheel drive vehicles without any grading or excavation of the stream bed or banks or crossing approaches.
- (4) No widening of watercourse crossings or road surfaces.

- (5) No tractor, vehicle, or equipment operations within Waterbody Buffer Zones (as defined in Attachment B), meadows, or wet areas, except for:
 - a. Use and maintenance of existing roads
 - b. Over-snow
 - c. Use of equipment with ground pressures less than 13 psi
 - d. Up to one crossing of a dry Class III watercourse per ½ mile of stream as described above in Criteria 3 above.
- (6) No activities on slopes greater than 60%, except for aerial or cable operations.
- (7) No tractor, vehicle, or equipment operations on slopes greater than 50%.
- (8) No construction of new skid trails on slopes greater than 40%, except over-snow operations.
- (9) No construction of landings requiring earthwork (i.e., grading or excavation) on slopes greater than 20% within 200 feet of a watercourse and where there is potential for sediment delivery to a waterbody due to soil disturbances.
- (10) No tractor, vehicle, or equipment operations on soils with high or extreme erosion hazard rating, known slides, or unstable areas, except over-snow operations.
- (11) In the Tahoe HU, equipment operations must be in compliance with the Basin Plan and TRPA regulations concerning steep slopes and high erosion hazard lands.

Conditions:

Dischargers conducting activities meeting the eligibility criteria listed above must comply with the following conditions in order to proceed under this Timber Waiver category:

- (1) Submit a complete Category 4 Application Form (Attachment C). Activities may begin upon verification from Water Board staff that an application was received as determined by a notice of receipt from Water Board staff or by confirmation of delivery by the United States Postal Service or other private carrier.
- (2) Pursuant to Water Code section 13267, **Implementation monitoring**, as described in the Category 4 Implementation Monitoring Form (Attachment D), must be completed before November 15 of every year for the duration of activities. Monitoring information must be submitted to the Water Board by January 15 of the following year.
- (3) Pursuant to Water Code section 13267, if tractor, vehicle, or equipment operations occur in the winter period (as defined in Attachment A), the discharger must comply with the Category 4 **Daily Winter-Period Monitoring Program** (Attachment E) and conduct Winter Implementation Monitoring (Attachment H). Data accumulated during this monitoring must be retained by the discharger and submitted July 15 of every year.

- (4) Over-snow watercourse crossings may be constructed as long as they are removed at the conclusion of operations or before a rain event if there is a risk of diversion or obstruction of the natural flow of water within the channel. Removal of such watercourse crossings must be done without disturbing watercourse bed or banks.
- (5) Facilities that cross watercourses that support fish must be installed and maintained so as to allow for unrestricted passage of fish during all life stages.
- (6) Within Water Body Buffer Zones and off existing roads, only operation of equipment with ground pressures less than 13 psi may occur:
 - a. When soils are dry (as defined in Attachment A) to a minimum depth of 12 inches and equilibrated groundwater levels are at least 2 feet below the soil surface, or
 - b. When hard-frozen soil conditions (as defined in Attachment A) exist, or
 - c. When snow depth is sufficient to not allow visible disturbance of soils,

AND

Equipment operations must occur at distances greater than 25 feet from a waterbody except for up to one Class III dry crossing per five acres.

- (7) In the Truckee River, Little Truckee River and Lake Tahoe HUs, only 13 psi cut-to-length equipment on granitic soils may operate within Lake Tahoe SEZs or 100 year floodplains under this category. Dischargers proposing other equipment or activities on volcanic soils must apply for a basin plan prohibition exemption for Executive Officer consideration under Category 6 of the waiver.
- (8) Tractor, vehicle, or equipment operations on roads or anywhere outside Water Body Buffer Zones must be limited to:
 - a. Times of the year when soils are not saturated (as defined in Attachment A), or
 - b. Over hard-frozen soil conditions (as defined in Attachment A), or
 - c. When snow depth is sufficient to not allow visible disturbance of soils.
- (9) Prior to the commencement of activities within Waterbody Buffer Zones (as defined in Attachment B), trees with a DBH² greater than 3 inches planned for removal, or trees designated for retention, must be marked (including a base mark below the cutline) or designated by written prescription and/or sample mark. However, all trees greater than 14 inch DBH planned for removal within Waterbody Buffer Zones must be marked (including a base mark below the cutline). Marking or written prescription must be done by either a:

² DBH (Diameter at Breast Height) means the diameter of the tree measured outside bark, at breast height, a point 4.5 feet (1.37 m) above ground level.

- a. Registered Professional Forester or supervised designee,
 - b. Federal Forestry Professional (as defined in Attachment A) or supervised designee, or
 - c. Natural Resource Professional, or supervised designee.
- (10) Activities must not cause or create erosion, destabilization of stream banks, temperature increases in waterbodies, disturbance to non-target vegetation within Waterbody Buffer Zones, or concentrated surface runoff.
- (11) Chipped and masticated material must not be discharged to waterbodies, or be deposited in locations where such material may discharge to a waterbody. Within Waterbody Buffer Zones chipped and masticated material must not exceed an average of two inches in depth, with a maximum depth of four inches.
- (12) All completed areas disturbed by activities must be stabilized at the conclusion of operations or before the winter period (whichever is sooner). For winter operations, areas must be stabilized prior to sunset if the National Weather Service forecast is a "chance" (30% or more) of rain within the next 24 hours.
- (13) In areas where tractors, vehicles, or equipment are operated over-snow the following must be clearly marked for operator visibility:
- a. All waterbodies,
 - b. Culverts, and
 - c. Stream crossings.
- (14) Plowing of roads, landings, and turnouts during over-snow operations must allow for adequate road drainage, and must not:
- a. Expose soils,
 - b. Damage road surfaces and associated drainage structures, or
 - c. Result in concentrated flows of snowmelt and runoff that has the potential to reach a waterbody.
- (15) The following conditions apply to prescribed fire:
- a. Areas burned within Waterbody Buffer Zones must be left in a condition such that ash, soils, and/or debris will not discharge to a waterbody.
 - b. If fuel breaks are constructed, effective waterbreaks must be constructed at the end of burning operations or prior to sunset if the National Weather Service forecast is a "chance" (30% or more) of rain within the next 24 hours.
 - c. Burn piles may be placed within Water Body Buffer Zones under all of the following circumstances:
 - i. Piles must not be located within 100 year floodplain of any watercourse or within 25 feet of a watercourse.

- ii. Piles must be limited in size to no more than 10 feet in diameter and 5 feet in height.
- iii. No more than 10% of the area within the Water Body Buffer Zone shall be covered in piles. This condition means less than 10% of the Waterbody Buffer Zone area subject to vegetation management activities.
- iv. No placement or burning of burn piles within Stream Environment Zones in the Lake Tahoe HU.

(Note: Prescribed fire within Waterbody Buffer Zones that do not meet the above conditions may be authorized pursuant to an activity-specific notification under Category 6. See General Provision 2.)

- (16) Pursuant to Water Code section 13267, notify the Water Board, in writing, at least **30 days prior** to the proposed application of pesticides (as defined in Attachment A) (except for application of borax and/or sporax directly to tree stumps). The written notice must include the following:

- a. Type of pesticide
- b. Method and area of application
- c. Projected date of application
- d. Measures that will be employed to assure compliance with the Basin Plan. Subsequent changes to the proposal must be submitted in writing at least 14 days before the application, unless Water Board staff agrees in writing to a shorter notice period.

- (17) Upon completion of timber harvest or vegetation management activities, dischargers must submit an Implementation Monitoring Form (Attachment G) and request termination of coverage under the Timber Waiver in accordance with Attachment M, Notice of Project Completion Form.

The discharger and the activities remain subject to all applicable Timber Waiver criteria and conditions (including required monitoring and reporting) until a Notice is received from Water Board staff terminating coverage under the Timber Waiver. Prior to approving (or declining) termination, Water Board staff may inspect the project area.

- (18) All activities conducted under Category 4 must comply with the General Conditions of this Timber Waiver and meet the category-specific eligibility criteria listed above.

**Category 5: CAL FIRE approved Plans
(including Timber Harvest Plans, Non-Industrial Timber Management
Plans, other Plans, and Amendments)**

Eligibility Criteria:

Activities eligible under this category must meet the following criteria:

- (1) The Timber Harvest Plan or Nonindustrial Timber Management Plan (Plan) has been approved by CAL FIRE.
- (2) If recommendations have been made by Water Board staff during the CAL FIRE Review Team process, they have been incorporated into the approved Plan or the Timber Waiver application (if not, apply under Category 6, or submit individual Report of Waste Discharge).

Conditions:

Dischargers conducting activities meeting the eligibility criteria listed above must comply with the following conditions in order to proceed under this Timber Waiver category:

- (1) Submit a complete Category 5 Application Form (Attachment F). Activities may begin upon verification from Water Board staff that an application was received as determined by a notice of receipt from Water Board staff, or by confirmation of delivery by the United States Postal Service or other private carrier.
- (2) A Registered Professional Forester (RPF) has clearly indicated (within the approved Plan) whether the proposed activities could occur within or affect the following areas:
 - a. Aquatic or wetland habitat
 - b. Known landslides or unstable areas
 - c. Areas of high or extreme erosion hazard rating
- (3) An RPF has clearly indicated (within the approved Plan or as an addendum to the Timber Waiver application) whether the following conditions are present within the Plan area:
 - a. Overflow channels resulting from the obstruction of stream flow or stream diversions
 - b. Culverts showing evidence of inadequate flow capacity
- (4) An RPF has clearly indicated (within the approved Plan or as an addendum to the Timber Waiver application) whether the following activities will occur:
 - a. Use of new or existing skid trails on slopes greater than 50% (or 30% in the Lake Tahoe HU). The identification of individual trails or the shading of areas planned for skid trail construction or reconstruction can satisfy this condition.
 - b. Construction of new watercourse crossings and/or the modification of existing watercourse crossings.
 - c. Landings or skid trails (including existing landings and skid trails and/or those to be constructed or reconstructed) proposed for use during timber harvest and vegetation management activities for which any portion of the landing or skid trail lies within a Waterbody Buffer Zone (as defined in Attachment B).
 - d. Equipment operations within Waterbody Buffer Zones, Lake Tahoe, Truckee

River or Little Truckee River HUs 100 year floodplains, or Lake Tahoe HU SEZs.

- e. Prescribed fire within Waterbody Buffer Zones, Lake Tahoe HU SEZs, or Lake Tahoe, Truckee River or Little Truckee River HUs 100 year floodplains.
- (5) If any of the activities or conditions listed above (in conditions 2 through 4) exist or are proposed, an RPF must provide within the approved Plan or Timber Waiver application, project modifications and/or mitigation measures to avoid any adverse impact(s) to water quality. The project must be conducted in accordance with the Plan and waiver application.

Within the Lake Tahoe, Little Truckee River and Truckee River HUs, Basin Plan prohibitions may apply (see Attachment N). If an exemption is required, the Discharger must request an exemption and provide additional information in the Plan or as an addendum to the Waiver application to address the required basin plan findings and criteria. The Executive Officer must grant an exemption before activities subject to the prohibitions may occur.

- (6) Facilities that cross watercourses that support fish must be installed and maintained so as to allow for unrestricted passage of fish during all life stages.
- (7) Culverts at watercourse crossings in which water is flowing at the time of installation shall be installed using methods to temporarily isolate or divert stream flows from the culvert installation area.
- (8) Permanent watercourse crossings and approaches shall be installed and maintained to accommodate 100-year flood flows and associated debris.
- (9) Vegetation, other than target species (as defined in Attachment A), that is found along waterbodies, or within or bordering meadows and wet areas, must be retained and protected during timber harvest and vegetation management activities, unless they have been marked or designated by written prescription for removal by an RPF or supervised designee to achieve fuel reduction goals or riparian forest health.
- (10) Pursuant to Water Code section 13267, comply with the **Monitoring and Reporting Program** described in the Category 5 Application Form (Attachment F), or as directed by the Executive Officer.
- (11) Pursuant to Water Code section 13267, notify the Water Board, in writing, at least **30 days prior** to the proposed application of pesticides (as defined in Attachment A) (except for application of borax and/or sporax directly to tree stumps). The written notice must include the following:
 - a. Type of pesticide
 - b. Method and area of application
 - c. Projected date of application

d. Measures that will be employed to assure compliance with the Basin Plan

Subsequent changes to the proposal must be submitted in writing at least 14 days before the application, unless Water Board staff agrees in writing to a shorter notice period.

- (12) Pursuant to Water Code section 13267, upon completion of timber harvest activities dischargers must request termination of coverage under the Timber Waiver in accordance with Attachment M, Notice of Project Completion Form.

The project and the discharger remain subject to all applicable Timber Waiver criteria and conditions (including required monitoring and reporting) until a Notice is received from Water Board staff terminating coverage under the Timber Waiver.

- (13) Activities conducted under Category 5 must comply with the General Conditions of this Timber Waiver and meet the category-specific eligibility criteria listed above.

Category 6: Activities that do not qualify for categories 1 – 5, and may include burning or equipment operations within Water Body Buffer Zones, 100-year floodplains or Stream Environment Zones.

Eligibility Criteria:

Activities that do not qualify under categories 1 – 5 may be eligible under this category if the discharger adheres to the following conditions.

Conditions:

Dischargers conducting activities meeting the eligibility criteria listed above must comply with the following conditions in order to proceed under this Timber Waiver category:

- (1) Submit a complete Category 6 Application Form (Attachment K). Activities may begin once Water Board staff has notified the discharger that their application is complete, or **30 days** following receipt of an application by Water Board staff as determined by a notice of receipt from Water Board staff, or by confirmation of delivery by the United States Postal Service or other private carrier.
- (2) A Registered Professional Forester (RPF), Federal Forestry Professional, or Natural Resource Professional, has clearly indicated (within certified environmental documents completed in compliance with the California Environmental Quality Act (CEQA) and/or the National Environmental Policy Act (NEPA), or within the Timber Waiver Application submitted to the Water Board) whether proposed activities could occur within or affect the following:
 - a. Aquatic or wetland habitat
 - b. Known landslides or unstable areas
 - c. Areas of high or extreme erosion hazard rating
 - d. Overflow channels, flood prone areas, and riparian areas

- (3) An RPF, Federal Forestry Professional, or Natural Resource Professional, has clearly indicated (within certified CEQA and/or NEPA document(s), or within the Timber Waiver Application) whether the following conditions are present within the project area:
- a. Overflow channels resulting from the obstruction of stream flow or stream diversions
 - b. Culverts showing evidence of inadequate flow capacity
 - c. Migrating channels or erodible watercourse banks
- (4) An RPF, Federal Forestry Professional, or Natural Resource Professional, has clearly indicated (within certified CEQA and/or NEPA document(s), or within the Timber Waiver Application) whether the following activities are included within the proposed project:
- d. Skid trails on slopes greater than 50% (greater than 30% in Lake Tahoe HU)
 - e. Construction of new watercourse crossings and/or modification of existing watercourse crossings
 - f. Landings and skid trails (including existing landings and skid trails and/or those to be constructed or reconstructed) proposed for use during timber harvest and vegetation management activities for which any portion of the landing or skid trail lies within a Waterbody Buffer Zone (as defined in Attachment B)
 - g. Equipment operations within Waterbody Buffer Zones or Lake Tahoe HU SEZs or Lake Tahoe, Truckee River or Little Truckee River HU 100 year floodplains.
 - h. Prescribed fire within Waterbody Buffer Zones, Lake Tahoe HU SEZs, or Truckee River or Little Truckee River HUs 100 year floodplains.
 - i. New roads within the Tahoe HU.
- (5) If any of the activities or conditions listed above (in conditions 2 through 4) exist or are proposed, the discharger must provide in the application, NEPA, and/or CEQA document, project modifications and/or mitigation measures to avoid any adverse impact(s) to water quality. The project must be conducted in accordance with environmental documents and the waiver application (including implementation of design features and mitigation measures).

Within the Lake Tahoe, Little Truckee River and Truckee River HUs, Basin Plan prohibitions may apply (see Attachment N). If an exemption is required, the Discharger must request an exemption and provide additional information in the Plan or as an addendum to the Waiver application to address the required basin plan findings and criteria including additional project specific monitoring to evaluate effects. The discharger may also include project trigger(s) (as defined in Attachment A) or thresholds where activities will stop if the trigger(s) are reached. The discharger will propose appropriate and quantifiable trigger. However, if the discharger does not propose trigger(s), or fails to propose trigger(s) adequate to prevent discharge, Water Board staff will work with the discharger to develop

appropriate trigger(s). The Executive Officer must grant an exemption before activities subject to the prohibitions may occur.

- (6) Pursuant to Water Code section 13267, comply with the **Monitoring and Reporting Program** described in the Category 6 Application Form (Attachment K) or as directed by the Executive Officer.
- (7) Pursuant to Water Code section 13267, if tractor, vehicle, or equipment operations occur in the winter period (as defined in Attachment A), the discharger must comply with the Category 6 **Daily Winter-Period Monitoring Program** (Attachment E). Data accumulated during this monitoring must be retained by the discharger and submitted July 15 of every year.
- (8) Over-snow watercourse crossings may be constructed as long as they are removed at the conclusion of operations or before a rain event if there is a risk of diversion or obstruction of the natural flow of water within the channel. Removal of such watercourse crossings must be done without disturbing watercourse bed or banks.
- (9) Tractor, vehicle, or equipment operations on existing roads anywhere and off roads outside Waterbody Buffer Zones must be limited to times of the year when soils are not saturated.
- (10) Tractor, vehicle, or equipment operations can occur anywhere when over hard-frozen soil conditions (as defined in Attachment A), or when snow depth is sufficient to not allow visible disturbance of soils.
- (11) If condition 10 cannot be met, tractor, vehicle, or equipment operations off road within Waterbody Buffer Zones must be limited to when soils are dry (as defined in Attachment A) to a minimum depth of 12 inches and equilibrated groundwater levels are at least 2 feet below the soil surface.
- (12) Within SEZs in the Lake Tahoe HU and 100 year floodplains of the Truckee River and Little Truckee River HUs, only 13 psi cut-to-length equipment on slash mats on granitic soils may be used provided conditions 8, 9, or 10 can be met without need for a Basin Plan prohibition exemption.
- (13) Within 100 year floodplains of Lake Tahoe, Truckee River and Little Truckee River HUs, and Lake Tahoe HU SEZs, other equipment may be used provided the Executive Officer has granted an exemption to the basin plan prohibition (see Attachment N).
- (14) All areas disturbed by timber harvest and vegetation management activities must be stabilized at the conclusion of operations or before the winter period as defined in Attachment A (whichever is sooner).

- (15) Facilities that cross watercourses that support fish must be installed and maintained so as to allow for unrestricted passage of fish during all life stages.
- (16) Culverts at watercourse crossings in which water is flowing at the time of installation shall be installed using methods to temporarily isolate or divert stream flows from the installation area.
- (17) Permanent watercourse crossings and approaches shall be installed and maintained to accommodate 100-year flood flows and associated debris.
- (18) Prior to the commencement of timber harvest and vegetation management activities within Waterbody Buffer Zones (as defined in Attachment B), trees with a DBH³ greater than 3 inches planned for removal, or trees designated for retention, must be marked (including a base mark below the cutline) or designated by written prescription and/or sample mark. However, all trees greater than 14 inch DBH planned for removal within Waterbody Buffer Zones must be marked (including a base mark below the cutline). Marking or written prescription must be done by either a:
 - a. Registered Professional Forester or supervised designee,
 - b. Federal Forestry Professional (as defined in Attachment A) or supervised designee, or
 - c. Natural Resource Professional, or supervised designee.
- (19) Vegetation, other than target species (as defined in Attachment A), that is found along waterbodies, or within or bordering meadows and wet areas, must be retained and protected during timber harvest and vegetation management activities.
- (20) The following conditions apply to prescribed fire:
 - a. Burn piles may be placed within Water Body Buffer Zones under all of the following circumstances:
 - i. Piles must not be located within 100 year floodplain of any watercourse or within 25 feet of a watercourse.
 - ii. Piles must be limited in size to no more than 10 feet in diameter and 5 feet in height.
 - iii. No more than 10% of the area within the Water Body Buffer Zone shall be covered in piles. This condition means less than 10% of the Waterbody Buffer Zone area subject to vegetation management activities.
 - iv. No placement or burning of burn piles within Stream Environment Zones in the Lake Tahoe HU.
 - b. Authorization for burn piles not meeting the conditions in a. or b. above will be considered by the Executive Officer following Water Board staff review of

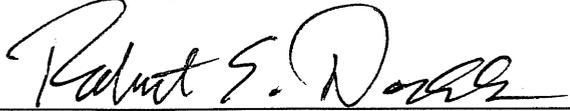
³ DBH (Diameter at Breast Height) means the diameter of the tree measured outside bark, at breast height, a point 4.5 feet (1.37 m) above ground level.

- burn plan(s) or supplemental information submitted with the Timber Waiver Category 6 Application that includes site specific information such as, but not limited to:
- i. Soil type(s)
 - ii. Vegetative cover
 - iii. Minimum distances from waterbodies
 - iv. Topography
 - v. Percent of area to be burned within the Waterbody Buffer Zone
 - vi. Explanation why burn piles within the Waterbody Buffer Zone is proposed.
 - vii. Mitigation measures or project design features to be implemented to ensure no significant adverse environmental effects will occur (See Attachment Q for example design features)
- c. These activities will be subject to additional monitoring and reporting requirements pursuant to Water Code section 13267 (e.g. vegetation recovery, evidence of erosion or transport of ash).
 - d. Areas burned within Waterbody Buffer Zones must be left in a condition such that ash, soils, and/or debris will not discharge to a waterbody.
 - e. If fuel breaks are constructed, effective waterbreaks must be constructed at the end of burning operations or prior to sunset if the National Weather Service forecast is a "chance" (30% or more) of rain within the next 24 hours.
- (21) Pursuant to Water Code section 13267, notify the Water Board, in writing, at least **30 days prior** to the proposed application of pesticides (as defined in Attachment A) (except for application of borax and/or sporax directly to tree stumps). The written notice must include the following:
- a. Type of pesticide
 - b. Method and area of application
 - c. Projected date of application
 - d. Measures that will be employed to assure compliance with the Basin Plan
Subsequent changes to the proposal must be submitted in writing at least 14 days before the application, unless Water Board staff agrees in writing to a shorter notice period.
- (22) Pursuant to Water Code section 13267, upon completion of activities dischargers must request termination of coverage under the Timber Waiver in accordance with Attachment M, Notice of Project Completion Form.
- The project and the discharger remain subject to all applicable Timber Waiver criteria and conditions (including required monitoring and reporting) until a Notice is received from Water Board staff terminating coverage under the Timber Waiver. Prior to approving (or declining) termination, Water Board staff may inspect the project area.

(23) Activities conducted under Category 6 must comply with the General Conditions of this Timber Waiver and meet the category-specific eligibility criteria listed above.

E. CERTIFICATION

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on May 14, 2009.



for HAROLD J. SINGER
EXECUTIVE OFFICER

- Attachments:
- A: Definitions and List of Acronyms
 - B: Waterbody Buffer Zones
 - C: Category 4 Application Form and Monitoring and Reporting Program
 - D: Category 4 Implementation Monitoring Form
 - E: Category 4 and 6 Daily Winter Period Monitoring Program
 - F: Category 5 Application Form and Monitoring and Reporting Program
 - G: Fall Implementation Monitoring Form (Category 5 & 6)
 - H: Winter Implementation Monitoring Form (Category 4, 5 & 6)
 - I: Forensic Monitoring Form (Category 5 & 6)
 - J: Effectiveness Monitoring Form (Category 5 & 6)
 - K: Category 6 Application Form and Monitoring and Reporting Program
 - L: Photo-Point Monitoring Form
 - M: Notice of Project Completion Form
 - N: Waste Discharge Prohibition and Exemption Information for the Little Truckee, Truckee River and Lake Tahoe Hydrologic Units
 - O: USFS Monitoring and Reporting Program
 - P: Summary of Monitoring and Reporting Required for Categories 4, 5, and 6
 - Q: Example Design Features for Pile Burning within Waterbody Buffer Zones



Sierra Forest Legacy
Protecting Sierra Nevada Forests and Communities



League to Save Lake Tahoe

California Regional Water Quality Control Board,
Lahontan Region
Attn: Andrea Stanley
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

February 9, 2009

Dear Ms. Stanley:

We submit the following comments on behalf of the Sierra Forest Legacy, the Tahoe Group of the Sierra Club and the League to Save Lake Tahoe. We would like to thank the Lahontan Water Board (hereafter "Lahontan") for the opportunity to provide comments on the Draft proposed Region-wide Timber Waiver ("Waiver"). We agree that there is a need to better streamline the permitting process for fuels reduction projects and appreciate Lahontan's efforts to improve its Regional Timber Waiver. However, as discussed in previous letters and meetings with staff, we have concerns that the proposed changes to existing law portend a substantially reduced role for Lahontan in protecting water quality within its region. As stated in our 12/5/08 letter on the working draft, we expect Lahontan to complete a comprehensive environmental review for these proposed changes, as required by the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.* As discussed further in this letter, the documentation provided with the proposed Waiver fails to perform this review as it relates to the entire Lahontan Region, and specifically the Lake Tahoe Basin, which as a designated Outstanding National Resource Water (ONRW), affords special protection.

However, we do not believe that including the necessary information will require a significant investment of time and resources by Lahontan staff. Rather, according to recent discussions with staff, much of the information we expect appears to be available and/or known to Lahontan staff and simply needs to be included in the proposed waiver and/or environmental analysis so the public is provided with the same information Lahontan used to inform proposed changes. In other areas, proposed changes are not supported by adequate scientific evidence; in these cases, we recommend that other Categories and/or regulations available in the proposed waiver (for example, regulations for demonstration projects) allow for fuels reduction projects which are eligible for the Waiver to proceed but to be done in a way which prevents significant impacts while providing important scientific information that can be used to guide the development of future projects.

We remain hopeful that Lahontan will take responsible action that ensures the improvement in water quality and other beneficial uses that Lahontan is charged to protect under California law while still allowing for necessary fuel reduction activities to occur.

Jennifer Quashnick,
Tahoe Area Sierra Club

Carl Young
League to Save Lake Tahoe

Michael Graf
Sierra Forest Legacy

Demonstration Projects:

Demonstration Projects were the subject of extensive discussion during the Tahoe Fire Commission process and vegetation management workshops. There has been a general recognition by all parties involved that more data is needed regarding the environmental impacts of fuels reduction activities and possible mitigation measures, especially in sensitive environments like stream environment zones and on steep slopes. However, because it is important to implement fuels reduction projects in a timely manner, efforts have focused on developing ways to complete projects without causing significant environmental impacts while gathering the data necessary to meet the following objectives:

- 1) Answer remaining research questions regarding the impacts of various methods;
- 2) Evaluate the efficacy of BMPs/mitigation measures; and
- 3) Prevent significant impacts through adapting project activities when data indicate impacts are occurring.

As a result, recent workshops and scientific reports have focused on implementing fuels reduction projects with consistent monitoring methods to answer remaining research questions.

Once a demonstration project has proven a method and/or BMP is effective at preventing significant impacts, this information can be used to guide future projects without the additional monitoring requirements. For example, the Heavenly Creek SEZ project demonstrated that the impacts of the cut-to-length harvester, *as used in those specific conditions*, were less than significant. Thus, these methods have been proven acceptable for use in future projects with comparable conditions and the additional monitoring requirements associated with demonstration projects would not be needed.

Lahontan should incorporate a section into the Waiver, where appropriate, which addresses demonstration projects. In fact, we heard project implementers express the same request during the public workshops held in November. As discussed with Lahontan staff during our 2/4/09 meeting, we request that language be added to Category 6 to recognize that demonstration projects may proceed with Executive Officer approval of the approach (additionally, the Waiver should reiterate General Provision 4 as well). The Waiver must clearly define what a demonstration project is. In addition to implementation, effectiveness and forensic monitoring (required for other Category 4 and 6 projects), all demonstration projects will require quantitative monitoring of impacts to soils, vegetation recovery, infiltration rate, etc. Monitoring protocols will be approved on a case-by-case basis and will be required prior to the start of the project, during the project, immediately after completion and following the winter after a project has been completed.

Once a demonstration project has shown that activities can be successfully mitigated and/or a given BMP is effective in appropriate situations, then such activities/BMPs can be used in other projects eligible for the Timber Waiver under comparable conditions.

Pile Burning in Sensitive Waterbody Buffer Zones

As discussed at our 2/4/09 meeting with Lahontan staff, mitigation for pile burning in sensitive Waterbody Buffer Zones (e.g. stream environment zones ([SEZs] in Lake Tahoe Basin) has yet to be proven effective. Fortunately, there are proposed demonstration projects in the planning stages which aim to investigate such mitigation (e.g. Alpine Meadows). However, the proposed Waiver allows pile burning in SEZs when impacts can be mitigated based on the expectation that during the 5 year time frame of the Waiver, new information will be gleaned from such demonstration projects that there will eventually be proven mitigation options. However, because this ‘placeholder’ concept is not clear in the proposed Waiver, we request the Timber Waiver specifically include a requirement that until effective mitigation measures have been determined, pile burning in SEZs should only occur if the project includes a demonstration component incorporating rigorous scientific data collection and analysis that examines the effectiveness of the mitigation measures. Once effective mitigation measures have been proven, future projects in comparable conditions could proceed under the Timber Waiver Category 6, Condition 18 without requiring a demonstration component.

Selection of environmental thresholds of allowable disturbance

As stated in our 12/5/08 comments:

“The proposed Waiver includes significant revisions to the waiver categories, aimed at creating categories associated with environmental impact, rather than land ownership or which entity is implementing a project. The scientific basis for the selected ‘impact’ limits must be provided in the environmental documentation. For example, the working draft (Category 2) proposes to allow equipment up to 10 pounds per square inch (psi) off of existing roads¹ without notification or monitoring. In this example, we expect the environmental documentation to include adequate scientific evidence supporting the selection of the 10 psi limit. The document should also evaluate alternative ‘impact limits’ and their effect on the environment and project implementation and monitoring.”

The proposed Waiver and Initial Study (IS) did not include this evidence. Per CEQA, the public must be provided the same information that Lahontan has used to proposed the new Waiver. Further, a member of the public should be able to view the evidence and understand how Lahontan selected the values it has proposed. Yet based on answers received at our 2/4/09 meeting with Lahontan staff, it appears that several values were chosen based on ‘institutional knowledge’ by Lahontan staff, and the only way for the public to find out this information is to contact Lahontan staff and make specific requests. This is certainly not the type of informational document required by CEQA.

Lahontan must include all evidence, including analyses, comparisons, references to other documents, etc., in the environmental review for the proposed Waiver. The environmental review must assess every impact of the proposed Waiver, the extent of that impact and how it is mitigated or addressed in the proposed Waiver.

Several categories allow equipment in sensitive “Waterbody buffer zones” up to 13 psi. In order to conclude that this ‘limit’ will not result in significant impacts, there must be evidence showing no impact on all soil types that would be encountered by projects in the Lahontan Region. We could not find any such evidence in the IS or associated references.

¹ Except within 25 feet of a water body.

Lahontan staff confirmed that no such evidence exists; the only study of such impacts in SEZs appears to be the Heavenly Creek SEZ project, which only tests equipment on the particular soil types in the project area. In fact, the project documentation recognizes that additional research on other soil types is needed:

“Monitoring should also be conducted where CTL technology is proposed for use on sites that have significantly different site conditions, including steeper slopes, soils with a higher silt-to-clay content, or less pre-existing vegetation cover in the form of grasses and shrubs.”

(Heavenly Creek SEZ Demonstration Project, 2007 Soil Monitoring Report, USDA Forest Service, LTBMU, page 20).²

According to the LTBMU Heavenly Creek Final Report, the USFS intended to work with Lahontan and TRPA to further investigate the use of equipment on other soil types:

“...A procedure will be developed by LTBMU staff for comparing the sensitivity of the Heavenly SEZ site relative to other SEZ sites proposed for future mechanical treatment. The delineation criteria for comparison will incorporate the characteristics of SEZs that make them prone to impacts from mechanical operations, such as connectivity to ground water and surface water, soil type, and slope. The criteria and methodology for comparing SEZ characteristics will be reviewed by staff at the Lahontan Regional Water Quality Control Board and the Tahoe Regional Planning Agency prior to its application...”

Were the criteria and methodology developed and peer reviewed? Is there a scientific report available from the USFS outlining their methods, results and conclusions? It appears that the USFS planned to investigate the use of cut to length equipment on other soil types *prior to its application*, yet no further research was performed. How can Lahontan conclude no significant impact if the impacts are unknown?

In summary, the environmental documentation fails to assess the impacts of allowing equipment up to 13 psi on all soil types in the Lahontan Region, and thus fails to analyze the environmental impacts of the proposed project. The same question exists for the allowance of equipment up to 10 psi found in category 2. Further, the document fails to analyze any alternative ‘limits’.

Lake Tahoe’s designation as Outstanding National Resource Water (ONRW):

We are pleased the proposed Waiver has been developed to include the Lake Tahoe Basin in the event it is not covered by another waiver. Lake Tahoe is a designated ONRW and a world-known National Treasure with a very fragile watershed and ever-decreasing clarity. However, it appears that only two areas within the proposed waiver may afford Lake Tahoe the additional protection it requires, which are provisions in Category 6 (as they reference possible prohibition exemptions) and Attachment O, which identifies additional USFS monitoring provisions for 303(d) water bodies (or those at or above TOC). Where is the analysis of how the Waiver will achieve Lake Tahoe’s more stringent environmental standards on all projects? This analysis must be included and presented clearly in the environmental documentation.

² http://www.fs.fed.us/r5/ltbmu/documents/ecd/2008/Heavenly_Creek_SEZ_Report_Final.pdf

Comparison between existing and proposed Waiver:

The CEQA documentation does not provide an analysis of how monitoring requirements will change throughout the Lahontan Region (including the Tahoe Basin) as a result of the new waiver. In particular there is inadequate analysis of how the Forest Service will monitor projects subject to this waiver. For example:

- The documents fail to provide a clear comparison of the existing versus proposed waiver's regulation of various activities. For example, what are the existing requirements compared to proposed requirements for projects that would fall in the proposed Category 2? Upon what evidence are any regulations (primarily monitoring and reporting requirements) reduced?
- How do the proposed monitoring and reporting requirements specifically compare to the existing "Monitoring and Reporting Program?" A simple tabular representation would help inform the public of the changes being proposed, including examples of typical fuels reduction projects and how they would be covered under the current versus proposed Waiver.

Additional Concerns for the Lake Tahoe Basin:

We remain particularly concerned about this issue given that Lahontan's waiver for the Tahoe Basin is currently before the State Board on review. If the State Board grants our Petition, we do not believe that the current CEQA documents for this regional waiver would constitute an adequate analysis of the issues regarding water quality in the Tahoe Basin.

To the extent Lahontan believes that this waiver would be controlling in the event the State Board were to grant the Petition, it must analyze the effects of reducing the monitoring components of the 2007 waiver as applied to projects in the Tahoe Basin. Accordingly, we hereby incorporate our previous comments, expert declaration and submitted evidence as part of these comments as well.

Other comments:

On page 10 of the proposed waiver, we recommend Lahontan clarify how much 'advance notice' is needed as required in number 7. Notice should provide adequate time for Lahontan to assess impacts of the change.

The existing waiver requires the submission of maps and other project information (page 4, number 8). Lahontan staff explained that this information will remain available under the proposed Waiver, yet not actually *required*.. We request the proposed Waiver/IS discuss what information will be available and where the public can access such information.

On page 12 of the proposed Waiver, we recommend Lahontan add the following (in bold): "... (3) No construction of new landings **or expansion of existing landings.**"

On page 13 and in other areas, the new Waiver limits chipped material in Water zones to 2 inches average and 4 inches maximum. As we stated at the 2/4/09 meeting, the environmental documentation should explain what this limit is based upon and the reason it was selected.

Additionally, the same section, number 7, includes requirements based on a specific forecast. The environmental documentation should explain the basis for the selection of these parameters and include historical weather data showing actual conditions occurring after these forecasts.

As we stated at the 11/14/08 public workshop, Lahontan should review and assess the adequacy and success of the 2007 MRP before making changes to the program. How can Lahontan assess what has been effective and what needs improvement without reviewing how the program has operated since its adoption in February 2007? In the proposed Waiver, several changes are proposed to the monitoring and reporting requirements; we reiterate our request that Lahontan first examine how well existing requirements have performed before proposing such changes.



California Regional Water Quality Control Board,
Lahontan Region
Attn: Andrea Stanley
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

May 8, 2009

Dear Ms. Stanley:

We submit the following comments on behalf of the Sierra Forest Legacy, the Tahoe Group of the Sierra Club and the League to Save Lake Tahoe. We would like to thank the Lahontan Water Board (hereafter "Lahontan") for the opportunity to provide comments on the April 2009 Draft proposed Region-wide Timber Waiver ("2009 Waiver"). We agree that there is a need to better streamline the permitting process for fuels reduction projects and appreciate Lahontan's efforts to improve its Regional Timber Waiver. However, as discussed in previous letters and meetings with staff, we have concerns that the proposed changes to existing law portend a substantially reduced role for Lahontan in protecting water quality within its region, including a reduction in currently required monitoring for fuel reduction activities in the Tahoe Basin.

As stated in our 12/5/08 and 2/9/09 letters on previous drafts made available for public review, we expect Lahontan to complete a comprehensive environmental review for these proposed changes, as required by the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.* Here, we do not believe that Lahontan has adequately addressed the potentially significant impacts from the monitoring changes proposed in the 2009 Waiver, nor has Lahontan provided the necessary and required documentation to support its proposed findings of no significant impacts as it relates to the entire Lahontan Region, and specifically the Lake Tahoe Basin, the only designated Outstanding National Resource Water (ONRW) in the Lahontan Region.

We continue to have an interest in working with Lahontan staff and other interested parties towards a win-win solution for Tahoe, in which needed fuel reduction activities may go forward in a manner that ensures that activities causing potentially significant impacts are quickly identified and promptly corrected. We have summarized the monitoring requirements we believe are necessary to protect Lake Tahoe in our letter to you dated April 24, 2009. We look forward to further discussions with staff regarding how best to protect the Lake and its surrounding environment through effective and feasible monitoring of the fuel projects planned for the Basin over the next decade.

//

A. Introduction

These comments are provided on the Conditional Waiver of Waste Discharge Requirements for Waste Discharges Resulting from Timber Harvest and Vegetation Management Activities in the LaHontan Region (“2009 Waiver”) proposed by Lahontan.

As you are aware, we have challenged Lahontan’s adoption in December 2008 of a waiver specific to the Tahoe Basin (2008 Waiver) through a Petition to the State Board. That Petition is currently pending. In the meantime, Lahontan is proposing to revise its regional waiver with the proposed 2009 Waiver. Based on statements in the 2009 Waiver and conversations with Lahontan staff and officials, we understand that should the 2008 Waiver be set aside or withdrawn, the proposed 2009 Waiver will be applied to the Tahoe Basin. As you are aware, we are primarily concerned with issues affecting Tahoe’s water quality and environment and thus these comments are primarily directed towards that possibility, that the 2009 Waiver may be applied in the Tahoe Basin.¹

We remain concerned that the proposed 2009 Regional Waiver makes a number of substantial changes to the existing 2007 Waiver that have the potential for significant impacts. Under the California Environmental Quality Act (CEQA), this requires the preparation on an Environmental Impact Report (EIR) rather than a negative declaration, as Lahontan has prepared for this project. Further, we do not believe the overall reduction in monitoring complies with the Water Code’s requirement that waivers be accompanied by monitoring requirements to ensure that water quality and Basin Plan beneficial uses are protected.²

We also reiterate our prior comments that Lahontan’s discussion of the impacts of the 2009 Waiver are inadequate as applied to the Tahoe Basin, an area that was not initially intended to be covered by this project. For example, the project documents contain inadequate discussion of the environmental setting in Tahoe with regard to 1) the amount of fuel reduction projects planned over the next decade; 2) the current state of Lake Tahoe’s water quality, including Lake clarity and current findings of the TMDL process; 3) how past monitoring in Tahoe has been conducted and Lahontan’s review of that monitoring; 4) the impacts on water quality and Basin beneficial uses of recent fuel related projects such as Third Creek or the Angora fire restoration; 5) the Forest Service’s and Lahontan’s South Shore Project, and how the proposed 2009 Waiver requirements relate to how that project has been recently proposed in the draft EIS/EIR, particularly regarding monitoring issues; and 6) the current state of negotiations between the State Board and the Forest Service regarding amendments to the 1982 Management Agency Agreement (MAA) and updated monitoring requirements. As part of our comments on this plan, we incorporate by reference into the record public documents in Lahontan’s possession regarding each of these issues.

Finally, there continue to be a number of areas in which the proposed 2009 Waiver appears to reduce the monitoring required under the 2007 Waiver. As set forth below, we believe these changes have the potential for significant impacts, thereby making the approval of this waiver through a negative declaration under CEQA unlawful.

¹ Many of these comments are also applicable to areas outside of the Basin as well. Thus, where applicable, please view these comments as applying to the Lahontan Region as a whole.

² On this issue, we hereby reiterate and incorporate by reference the our prior comment letters, State Board Petition and Exhibits regarding alleged Water Code violations in Lahontan’s approval of the 2008 Waiver, which also apply to this project.

B. Changes in How Forest Service Projects are Monitored

The 2007 Waiver required effectiveness and forensic Monitoring according to the Monitoring and Reporting Program (MRP), included as Attachment 2 to the 2007 Waiver for a Forest Service projects in high risk areas such as steep slopes and stream zones. The 2007 Waiver allowed the Forest Service to request an alternative compliance approach to monitoring utilizing components of its BMP Evaluation Program (BMPEP.) *See* 2007 Waiver (“The USFS will collaborate with Water Board staff to determine which projects may use the BMPEP to satisfy effectiveness and forensic monitoring requirements.”)

The 2009 Waiver changes the default monitoring requirement for Forest Service projects from the MRP to the Forest Service’s BMPEP except for watersheds above the threshold of concern (TOC) or water quality impaired, as follows:

In watersheds that are at or above the TOC, or that will be elevated above TOC due to project implementation, or are in watersheds with 303(d) listed waters impaired for sediment, U.S. Forest Service watershed staff shall submit a monitoring report that utilizes the BMPEP protocols to evaluate the effectiveness of implemented BMPs for any Category 6 activities... BMPEP protocols shall be applied at focused "high risk" sites rather than on a random basis to assess the effectiveness of the applied BMPs.

Here, Lahontan is on record that the Forest Service’s BMPEP, which collects limited monitoring on a random basis in an annual Forest wide report, is inadequate to protect water quality, particularly in the Lake Tahoe Basin. *See* September 17, 2008 Comment Letter, Ex. 13.³ Here, however, the 2009 Waiver appears to be relying on the BMPEP as a substitute for the MRP for all watersheds in the Basin that are not above current TOCs.

This language is also impermissibly vague for two reasons.

First, it is not clear how Lahontan intends to apply the second part of this provision requiring heightened BMP monitoring for watersheds with 303(d) listed waters impaired for sediment to the Tahoe Basin. Here, Lake Tahoe is a 303(d) listed sediment impaired waterbody and all streams within the Basin flow into the Lake. Thus, under a literal reading of this provision, heightened monitoring would be required for *all* Forest Service Projects falling under Category 6 that occur in the Basin. However, as recently demonstrated by the South Shore DEIS, and pp. 4-2 – 4-3, Lahontan’s and the Forest Service’s current approach to monitoring does *not* require heightened monitoring for all Basin watersheds, and in fact limits such monitoring in that project to only 3 out of 18 listed watersheds. *See* DEIS, p. 3-108, Table 3-68.

Prior to any action on this Waiver, Lahontan must clarify this discrepancy in current policy; otherwise Lahontan’s review process cannot satisfy the informational standards of CEQA. *See e.g., Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (“If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. [citations omitted.] The EIR process protects not only the environment but also informed self-government.”)

³ We hereby incorporate all exhibits submitted in our prior comments on the 2007 Waiver as exhibits to this comment letter as well.

If in the alternative Lahontan intends to interpret the provisions discussed above as requiring heightened monitoring only in watersheds above the TOC, this would be a potentially significant impact. As discussed in our prior comments and in the Supplemental Declaration of Laurel Collins (“Supp. Collins Decl.”), fuel reduction activities, particularly on steep slopes and in stream zones, have the potential to cause significant amounts of sediment discharge, which has little or nothing to do with the overall percentage of equivalent impermeable surface area within the watershed:

In my experience working in the Sierra Nevada, I have observed that the logging activities on steep slopes and within stream zones have the potential to discharge substantial amounts of sediment. Sediment sources are not dependent upon the creation of impermeable surfaces, therefore establishing whether monitoring should occur or the type that is needed should not be based upon this calculation. For example, areas of landslides that are not necessarily steep, can be mobilized by changes in the drainage network that are caused by road ditches and stream crossings. Additionally, just the loss of interception can change the amount of groundwater in the soils and timing at which saturation occurs. These changes combined with loss in root strength that would be associated with logging or thinning operations can alter the soils resistance to sliding and to surface erosion.

See Sup. Collins Decl. Submitted with these Comments. Collins concludes: “Because of their limitations... in my opinion [TOC] calculations should not be the basis for determining whether monitoring is needed.”

Lahontan’s March 2008 Pollutant Reduction Opportunity (PRO) Report⁴ supports the idea that sediment loading may occur from logging activities in sensitive areas, regardless of the relative TOC status within the watershed:

Developing and evaluating PCOs for forested areas (Setting C) was more difficult because there is very little measured data from the Tahoe region that could be used to assess the impacts of forest thinning and fuels management treatments. However, fuels-reduction treatments are planned for much of the forested portion of the Tahoe Basin in the near future. Fuels treatments range in intensity from hand crews, to prescribed fire, to mechanical harvesting systems; their potential impacts on runoff and erosion processes in the Tahoe Basin are poorly understood. PCOs for forested areas include many of the same treatments used on roads and ski slopes and are aimed at mitigating any impacts of forest management treatments and reducing loading from areas that have been disturbed by past logging activities (such as abandoned roads and trails).

PRO Report, p 176. The PRO Report makes an assumption that relatively undisturbed forested upland areas will not contribute substantially to overall sediment loading due to the existing restrictions on logging on steep slopes and in SEZs:

From a sediment or nutrient-loading analysis standpoint, forest management is wrought with uncertainty. Depending on the specific treatments applied and local physiographic factors (soil type, slope angle, soil moisture/seasonality), ground-based mechanized thinning and fuels treatments have the potential to increase runoff and erosion, at least at

⁴See http://www.waterboards.ca.gov/lahontan/water_issues/programs/tmdl/lake_tahoe/docs/presentations/pro_report_v2.pdf.

the local scale. However, given the types of low-impact treatments being employed and planned in Tahoe Basin fuels management efforts (primarily hand treatment and CTL systems) and regulatory limitations on mechanical treatment on steep slopes and SEZs, fuels treatments are unlikely to increase sediment and nutrient loading at the subwatershed scale (the scale of this analysis). Therefore, the main opportunities to reduce loading from forested areas are related to careful planning and implementation of BMPs/PCOs (e.g., obliteration of roads, landings and trails).

Id., p 184.

The 2009 Waiver changes this calculation by allowing for mechanical treatments without the monitoring as previously required under the 2007 Waiver. In this way the 2009 Waiver not only violates CEQA, but undermines Lahontan's entire TMDL process and ability to comply with its own Basin Plan objectives.

A second problem is that, however the TOC issue is interpreted, no information is given as to how Lahontan and the Forest Service intend to conduct monitoring at "high risk" sites. No information is given as to how many sites this will entail, will it apply to all streamzones and steep slopes, or just a small subset, or what kind of monitoring will be conducted. Here, Lahontan appears to have waived its set forensic and effectiveness monitoring requirements for Category 5 and 6 projects in favor of vague proposals to work out some sort of agreement with the Forest Service, which the record shows has been recalcitrant in conducting monitoring beyond its BMPEP. This is a substantial change from the 2007 Waiver, which required affirmative action by Lahontan for the Forest Service to avoid the general monitoring obligations under the MRP. Thus, for this reason as well, the 2009 Waiver and accompanying documents fail as an adequate informational review under CEQA.

To correct these deficiencies, Lahontan must clearly indicate that the heightened monitoring requirements apply to the entire Lake Tahoe Basin Watershed. Further, Lahontan must clarify what heightened monitoring actually means in comparison to what is currently required under the 2007 Waiver.

C. Mechanical Treatments in Streamzones

The 2009 Waiver proposes to dispense with forensic and effectiveness monitoring even for high risk projects utilizing mechanical treatments in streamzones in the Basin, so long as the equipment does not exceed 13 psi for granitic soils and 10 psi for all other soil types. This is a significant change from the 2007 Waiver, which required forensic and effectiveness monitoring for any mechanical treatments in SEZs.

The use of mechanical equipment in sensitive stream zones has the potential to cause erosion and pollution discharge. (See 2007 Waiver comments and attached Exhibits; Supp. Collins Decl.) Lahontan claims that it has assessed the impacts of projects utilizing mechanical equipment at these psi's and found that there is no potential for such impacts to occur. These findings are contradicted by the Supplemental Collins Declaration, which states:

In my opinion, this has the potential for significant impacts. It is common knowledge and well documented in the literature that ground-based equipment in sensitive stream zone areas has the potential to cause erosion and sediment discharge. More focus should be put on keeping equipment out of the stream zone or at least assessing what the equipment is actually doing in the stream zone that could cause impacts. Too much emphasis is placed

on potential changes in permeability rather than assessing all processes that could deliver sediment to the stream and route it to Lake Tahoe.

Collins notes that certain types of granitic soils have the potential for erosion and sediment deposition:

I do not agree that use of mechanical equipment on granitic soils makes impacts less than significant. In my experience, certain types of granitic soils are highly susceptible to erosion due to ground based equipment use, especially in areas with decomposed granitic bedrock and/or granitic soils that have abundant fine sediment, which are often referred to as *grus*.

Lahontan has also provided no evidence to support its assertions either for a 13 or a 10 psi limit. For example, on the overall 10 psi limit, we previously requested Lahontan to include the environmental documentation supporting its purported findings. The April 2009 Proposed Waiver includes references (Lake Valley Fire Protection District, 2006. *Christmas Valley 3 Defense Zone Project*), yet still fails to include the actual report that is referenced as the supporting information for this environmental criteria, nor any details regarding the project and why 10 psi is found to have no impact on sensitive areas.⁵ The environmental document for the project must clearly explain the data supporting the selection of these criteria so the public can understand the proposal. Unfortunately the revised document still fails to do so.

Further, on the 13 psi limit applicable to granitic soils, the evidence simply does not exist to support a full approval of all equipment of this pressure in all areas of the Basin. Lahontan refers to the results of the Heavenly Creek Demo Project as such evidence but does not provide any data or even reference to the documentation that would support this conclusion. For example, the Heavenly Creek SEZ Demo Final Report (March 2008)⁶ states that forensic and effectiveness monitoring will occur in 2008 when the snow has melted and the first major summer or fall rain storm event occurs, with photos to determine whether visible signs of erosion, sediment transport, or deposition has occurred as a result of project activities. However, the Forest Service's BMPEP Annual Report for 2008 does not include Heavenly Creek.⁷ In addition, the Final Report states that data collections for Ksat, bulk density, and soil cover will be undertaken in 2012, to evaluate the recovery rates in these parameters, and follow-up. *Id.* p. 9. Clearly these follow-up evaluations, which go to the heart of the demo project's findings, have not occurred. Yet Lahontan appears nevertheless prepared not only to allow these activities in streamzones, but to waive any corresponding monitoring requirements.

The lack of presented information – as opposed to unsupported statements in the 2009 Waiver documents -- means that this review process does not satisfy CEQA standards for information. How is the public expected to evaluate these conclusions, or to assess whether Lahontan's conclusions are based on sound science as opposed to subjective opinion? Has the Forest Service continued to perform in-stream water quality monitoring on Heavenly Creek to confirm model predictions? Have soil quality and vegetation cover measurements continued to date to confirm conditions have not changed from immediate post-project measurements?

⁵ The references appear to refer to a 2006 Report (as found in the References section), however on page 25, the reference to LVFD is dated 2008.

⁶ See http://www.fs.fed.us/r5/lbmu/documents/ecd/2008/Heavenly_Creek_SEZ_Report_Final.pdf. We incorporate this report by reference into the record for this project.

⁷ See http://www.fs.fed.us/r5/lbmu/documents/ecd/2009/LTBMU_2008_BMPEP_report_Final_2_2009.pdf

Given the lack of presented information and the clear incomplete status of the Heavenly demo project, it is entirely premature for Lahontan to waive monitoring requirements for mechanical operations in sensitive streamzone areas.

In sum, we agree that there were some promising results from the Heavenly Creek Demo project that can be used to minimize monitoring requirements for future projects with comparable conditions and methods. However, some level of monitoring is still necessary post-project. The Heavenly Creek Demo project tested out the impacts of the specified methods used in that project on soil quality, water quality and vegetation cover. These data can be used to help define the project design features/BMPs that are needed in future projects in comparable conditions. However, monitoring is needed to ensure those BMPs are implemented and effective. Without the long-term data from the Heavenly Creek Demo project to confirm the WEPP model predictions, it is not yet possible to confirm that actual conditions behaved as predicted by models, which are inherently uncertain. Lahontan itself has acknowledged this point in its comments on the Forest Service's BMPEP:

The BMPs should be re-evaluated after major storm events and years of use...to determine the true effectiveness of the management measure over the long term. BMPs are designed to minimize the effect of non-point source pollution long after the individual projects are completed. In order for the analysis to provide a true understanding of the effectiveness of an individual BMP, follow up inspections that evaluate the BMP's long term durability and applicability are necessary.

See September 17, 2008 Comment Letter, Ex. 13. ⁸

D. Elimination of Monitoring for Post-Fire Salvage and Rehabilitation Projects

The 2009 Waiver eliminates all monitoring requirements for post-fire salvage and rehabilitation logging projects, which have the potential for significant impacts. However, this change has the potential for significant environmental impacts. As noted by Collins:

Salvage logging has the potential to cause erosion and discharge to watercourses. As stated above, the mechanical disturbance of the fine root network can make the bare surface soils much more susceptible to surface erosion. Soils influenced by hot fires, where most all the organic material near the surface has been removed are much more likely to experience erosion from raindrop impact and surface erosion. Sediment entrained by the processes by overland flow over the bare mineral surface soil has a much greater potential for being delivered to a stream. Further, post-fire rehabilitation projects are not necessarily benign and may in fact be the source of increased pollution. Many erosion control projects have created sediment sources, rather than reduce them.

See Supp. Collins Decl. Collins also notes:

Following fire, but even before the first rainfall, natural sediment supply rates into streams can be quite high from dry ravelling of soil from the inner gorge of stream canyons. After rainfall, especially in areas that have hydrophobic soils, pervasive rill networks can occur over vast portions of the hillsides and can directly supply fine surface

⁸We note also that Lahontan's limit of 13 psi equipment to granitic soils under certain conditions does not apply to activities outside the Basin, even though Lahontan appears to lack any study to support the elimination of monitoring for such use on volcanic soils throughout the Region.

sediment to the stream network. Without effectiveness and forensic monitoring, these natural geomorphic responses might be difficult to distinguish from man-related project causes in areas that are treated for post fire erosion control.

See Supp. Collins Decl.,

An example of how post-fire salvage operations may have adverse effects to water quality in the absence of monitoring is provided by recent photos of the USFS System Road and Trail Hazard Tree Removal Project, which conducted tree removal operations following the Angora Fire. As these photos demonstrate, the lack of any follow-up monitoring by Lahontan has the potential for significant impacts to water quality and Basin beneficial uses that will not be identified. *See Attached photos 1-6 and accompanying map explaining location of photos.*

The 2009 Waiver also fails to include the 120 day timeline for post-fire emergency activities, which was previously part of the project proposal. Without the 120 day timeline, and without any criteria for what constitutes an “emergency” projects such as the USFS System Road and Trail Hazard Tree Removal Project, which did not pose an ‘imminent threat’ in the fall of 2008 when it was actually implemented, will be entitled to an exemption from even implementation monitoring, thereby leading to potentially significant water quality impacts.

Given the potential for such impacts, there does not appear to be a clear rationale for why effective monitoring cannot be conducted as part of all post fire projects. The requirement to conduct monitoring does not prevent the project from going forward. The project documents do not spell out the need to exempt these projects from monitoring review.⁹

E. Elimination of Notification and Monitoring for Hand Thinning Projects in Sensitive Stream Zones

The 2009 Waiver eliminates all notice and monitoring requirements for hand-thinning projects in stream zones, even for projects conducted in wet soil conditions. We do not believe that all such projects should be exempted from monitoring requirements, particularly if a high percentage of the fuel reduction that will occur in Tahoe is done in this manner. As the photos of 3rd Creek demonstrated, hand thinning projects in sensitive streamzones have the potential for significant impacts:

Although non-mechanical logging within stream zones is more benign than mechanical operations, it too has the potential to lead to significant sediment discharge due to the removal of vegetation that stabilizes the bank channel. After logging, thinning, salvage operations, or other fuel modification activities that cut trees there is a subsequent loss in soil strength to resist surface erosion and landsliding. This is caused by the decay and loss of small and large roots. For example, studies have shown that large roots of conifers decay in about 5-7 years (Coats and Collins, 1981). This is before roots of germinated seedlings can contribute significant added cohesion. At this point, forest soils dominated by conifers are at their weakest to resist mass wasting from landslides. Continued effectiveness monitoring is needed to capture the potential effects of these land use

⁹ At the least, the criteria for an emergency must be very clearly spelled out in the Waiver, and the Category must include very specific criteria and conditions that will limit projects in Category 3 to these actual types of emergency post-fire activities – within a designated time frame -- which aim to reduce environmental impacts without adding to them.

practices, otherwise significant negative impacts caused by land management might go undetected. These kinds of impacts that provide fine sediment to any portion of the stream network, even along small headwater ephemeral channels can influence any particular designated “class” or size of downstream channel.

See Supp. Collins Decl.

F. Additional Comments

1. Hazard Trees

The proposed Category 1 includes hazard trees posing an “imminent threat” to life or property. However, what is considered “imminent” is unclear. After the Angora Fire, burnt trees next to homes and roadways were cut fairly quickly, before they could fall on property or people. Although there are concerns with the extent of this cutting, many trees that were removed did pose an ‘imminent’ threat. However, hazard trees after a fire that will not pose a hazard for years or longer, and/or where alternatives are available in the meantime (e.g. closing a trail temporarily), may not pose “imminent threats.”

2. Pile Burning in Water Buffer Zones

Lahontan has added new ‘parameters’ that define when burning in Water Buffer Zones in the Lake Tahoe Basin may be allowed under Category 2 (thus without monitoring requirements). These conditions include:

Piles must not be located within 100 year floodplain or any watercourse or within 25 feet of a watercourse. Piles must be limited in size to no more than 10 feet in diameter and 5 feet in height. No more than 10% of the area within the Waterbody Buffer Zone shall be covered in piles.

Lahontan fails to include the analysis that serves as the basis for these parameters. Upon what evidence does Lahontan find that pile burning within these values creates no impact in Waterbody Buffer Zones (WBZs)? Additionally, the parameters are unclear. What area is used to define “10% of the area...”? The entire area of the Waterbody Buffer Zone that falls within a project (including the collective sum if there are multiple WBZ’s)? Or will Lahontan define ‘tracks’ of WBZs that are environmentally similar and draw the boundary for the 10% determination around each like ‘segment’? Any such parameters must be clearly spelled out and the supporting evidence showing no impact from such burning in any areas that will qualify under this category must be presented.

We are opposed to allowing pile burning in WBZs through Category 2 given the absence of any evidence showing that such burning creates no impact in all areas in the Tahoe Basin. This appears to be a weakening of the existing rules, and those proposed in January, which did allow for some burning in WBZs based on consultation with Lahontan staff (and only when it is found to have less impact than the non-burning alternatives). In fact, we are only aware of one situation in recent years where burning in a WBZ was found to have less impact than removing by hand crew, and thus allowed by Lahontan based upon case-specific consideration.

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3. Watercourse Crossings

The 2009 Waiver includes a new parameter which allows some discharge under Category 4 not previously proposed, and not analyzed in the environmental document. "...and up to one dry Class III crossing per five acres" has been included as an exception for the construction of new watercourse crossings. Upon what evidence has Lahontan determine that one dry Class III crossing per every 5 acres will have no impact? No such evidence is presented in the environmental document.

We are opposed to allowing the construction of new watercourse crossings through a Category which lacks adequate monitoring requirements, and do not find any evidence supporting this proposal.

4. Inconsistency on Approach to Steep Slopes

The proposed Waiver now contains this new eligibility requirement "In the Tahoe H.U., equipment operations must be in compliance with the Basin Plan and TRPA regulations concerning steep slopes and high erosion hazard lands." (Category 4: Eligibility Criteria (10))

Either Lahontan specifically identify the source of the definition for these terms as defined by the Basin Plan and TRPA Regional Plan (and include the definitions in the Waiver) or Lahontan must clearly define these terms. The regulation of 'steep slopes' varies in different areas; in the Tahoe Basin, a slope greater than 30% is generally defined as a 'steep slope' however outside of the Basin this number is higher. Yet further, the Tahoe TMDL report (Sept. 2008) reviewed forest management with a steep slope determination of 20% and greater.

5. Categories 2-6: Over-the-snow operations

As we have raised in previous conversations with Lahontan staff, we are concerned with the selection of over-the-snow operations with a 'back-up' plan does not exist. The Tahoe Basin's snowpack continues to decline as we see more rain and less snow; thus, conditions allowing over the snow operations are expected to occur less often. During the Fire Commission process, there were several discussions regarding the need for operations to have a 'backup' plan for their project in the event they can not complete over the snow operations. There appears to be no clear provisions for this in the Waiver. We have seen the consequence of poor planning recently in the USFS Angora Fire FS System Road and Trail Hazard Tree Removal Project, where over the snow operations began later in the year to thin SEZs and the snowpack melted before operations could be completed. What has been left is a very disturbed SEZ, filled with small biomass that not only causes disturbance in the SEZ, sending additional loading to Lake Tahoe, but also creates additional fire hazard due to the extent of downed small debris in the SEZ. As the attached pictures show (taken 4/29/09), the SEZ has been left in poor shape and now that the snow has melted and the SEZs are moist, there does not appear to be any environmentally sound way to remove this material from the SEZ anytime soon – certainly not before fire season picks up in Tahoe.

6. Categories 2-6: Tree Marking

In response to comments, Lahontan has changed the proposed Conditions such that tree marking need not be performed if 'designated by written prescription.' The prescription for tree cutting is developed by natural resource experts, however when contractors or other operators are doing the work, they may not have the ecological understanding (or interest) to translate the tree marking

prescription accordingly. A common response to concerns raised by conservation community members regarding trees removed during a project has been that ‘the contractor made the decision.’ This is unacceptable. Therefore, we recommend that Lahontan remove the proposed language and instead incorporate the recommendation made by CA State Parks, 2/2/09:

“An alternative to the 3 inch DBH requirement is to increase the DBH of the marked trees in WBZs to 14” DBH to be consistent with the Tahoe Regional Planning Agency, Code of Ordinance Chapter 71.3.”

We agree that marking every tree above 3” dbh is very time and resource intensive, especially when the smaller trees are the targeted trees for removal for forest health and fire protection purposes. However, the other end of the scale - where no trees are marked but rather decisions made by a contractor during the operation - is not protective enough.

7. Lack of Defined Triggers for Further Action

The proposed waiver states that the discharger “*may also include project triggers or thresholds where activities will stop if threshold is reached.*” (See Category 6, Condition 5): We recommend Lahontan add “Lahontan will select appropriate, quantifiable trigger values if discharger fails to include triggers or proposed triggers are not adequate to prevent discharge.” The concept of triggers has been discussed a great deal among Tahoe Basin regulators, and there has been a general understanding that a ‘trigger value’ is a value that represents a measurement below or before a significant negative impact occurs, so that if the trigger value is reached (e.g. measured soil disturbance), operations causing the discharge are stopped and alternative actions taken. This prevents significant environmental impacts. (See also our April 24, 2009 Comment Letter.)

The USFS Proposed South Shore Fuels Reduction Project has used the term ‘trigger’ to define a model-based value that is instead used prior to project implementation as a means to decide where certain monitoring should occur (e.g. the USFS has said the ‘trigger’ for whether additional effectiveness and forensic monitoring is performed is whether a subwatershed is above the Threshold of Concern, will be pushed above the TOC, or whether the risk ratio in a watershed will increase by a specified amount [April 2009 So. Shore Project DEIS]). This interpretation is inconsistent with the general regulatory understanding of what a trigger value is. Thus, to avoid confusion, we recommend Lahontan incorporate an adequate definition of trigger, and include the above requirement that assigns Lahontan the responsibility of selecting adequate trigger values in the event a project proponent is relying on an inconsistent definition or has not selected an adequate trigger value. This will prevent project impacts by stopping harmful activities before they cause significant harm (as intended by the concepts of trigger values and adaptive management).

G. Conclusion

We remain hopeful that Lahontan can come up with a monitoring plan for the Tahoe Basin that protects water quality while also allowing for fuel reduction activities to go forward. Thank you for your consideration of these comments.

Sincerely,

Jennifer Quashnick,
Tahoe Area Sierra Club

Carl Young
League to Save Lake Tahoe

Michael Graf
Sierra Forest Legacy