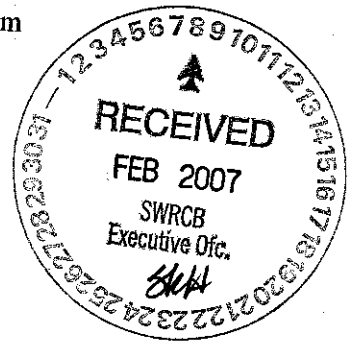


2/20 BdMtg Item 8
Squaw Creek
Deadline: 2/8/07 1 pm

February 5, 2007

State Water Resource Control Board
1001 I Street
Sacramento, Ca 95814-100
Attn: Song Her, Clerk to the board



RE: Comment Letter – Squaw Creek Sediment TMDL

Dear State Water Resource Control Board,

Thank you for the opportunity to provide further comment on the Squaw Creek TMDL. As a stakeholder in the watershed this issue is of critical importance and we sincerely implore you to seriously reconsider adopting Resolution R6T-2006-0017 as it currently stands. Enhancing the water quality of Squaw Creek is a priority for SVSC, as we have, and continue to implement significant erosion control measures that have actually improved water quality with respect to sediment vs. natural conditions (Rosewood). As previously addressed in written, public, & expert testimony through out the Squaw Creek TMDL process we feel that the TMDL basis is fundamentally flawed and lacks the merit and sound science to become a regulatory controlling mechanism for the general good and welfare for the people of California for the following reasons:

1. In accordance with state Business and Professions Code section 6700-6706.3 and pursuant to Title 23, Waters, Division 2, Department of Water Resources (23 CCR s 380) in regards to government agencies use of licensed professionals, implies that this TMDL resolution not be adopted because the studies performed in determining the regulatory control measures for the TMDL are based on non licensed professional consultants as defined by the State of California (i.e., Maholland 2002 – a graduate student, and DRI report from the state of Nevada).
2. Regardless of the non-professional qualifications Maholland, who provides the primary data for the basis of the TMDL, confirms and recommends in her thesis “to better access, quantity and ultimately provide sound management direction... additional studies should be conducted and higher quality data collected.” (3.21, Staff Comments).
3. The guidelines that studies have a shelf life of 5 years. The studies used in determining this TMDL date back to the year 2000.
4. Sate Water Code Section 13246 (a) states that the “state board shall act upon any water control plan not later than 60 days from the date the regional board submitted the plan to the state board, or 90 days from the date of resubmission of the plan.” More than 270 days have lapsed since the regional water control board adopted this proposed TMDL in April of 2006.
5. Inconsistencies in the TMDL that imply that upper Squaw Creek watershed sites are impaired, when the data from reference condition scores (Table 2-4) indicate that the areas of the Creek are not, staff comment 3.28 further confirms this.

6. In accordance with the Federal Code for Water Quality Planning and Management at 40 CFR Part 130.7 which defines the terms used to interpret and implement the EPA's regulations for section 303(d) of the Clean Water Act, it requires that "...Determinations of TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters." Given that Squaw Creek is a perennial, intermittent, ephemeral seasonal drainage, (it dries up, and has since pre ski resort development) the EPA dictates that the TMDL take this into to consideration when establishing a TMDL. Thus, establishing a TMDL with reference creeks that do not dry up as a basis or baseline for establishing a TMDL for Squaw Creek defies the causality and the intent of the Clean Water Act.
7. The Clean Water Act 40 CFR Part 130.7 further states that "TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality." It is our contention that the TMDL does not accurately take into account "seasonal variations" (no flow does not = low flow) or provide an adequate "margin of safety" due to a "lack of knowledge" and uncertainty concerning the causality relationship between reference creeks to determine a suitable TMDL, as well as the lack of consistent reliable data and scientific information to base the proposed numerical targets as required by the EPA. This despite the availability of SVSC's recently completed Facilities Assessment and Ecorp Consultant's Bioassessment of Squaw Creek to aid in establishing a realistic TMDL. This lack of knowledge is further evident in the resulting target TMDL goal of 50% sediment reduction extrapolated from reference site creeks. Given the apparent lack of knowledge and data used to establish the proposed TMDL the process should be revisited to insure a sound basis of information is used in providing a regulatory controlling document.
8. The geological and geomorphic make up, conditions, glacial scaring, the amount of decomposed granite, sand stone, exposure, vegetation, fauna, and actual raw acreage of the Squaw Creek water shed significantly vary from the stated comparative reference creeks, and as consequence they do not adequately represent a suitable basis or baseline for reference comparison, as intended in the EPA's protocols for developing sediment TMDLS.
9. As referred to in Staff comment 3.29, only one season's data from the Herbst Report is used to determine a numerical target for the TMDL. Relying one seasons data (and consequently only 2 testing sites) is irresponsible for a state governing agency charged with promulgating the public good. According to the proposed TMDL the Bioassessment criteria was established based on the sampling that was conducted in July of 2001, when there were flows in the creek, as opposed to in 2000 when there where only "pools" of water remaining in the creek.
10. According to Appendix B (B-2.1) Site Selection the Herbst Report surveyed "22 separate locations (4 Squaw Creek sites and 2 reference sites were sampled in both years to examine temporal variation)." This means only 2 sites on Squaw Creek were evaluated to establish the TMDL, based on only including the 2001 data.

11. Thermal measurements were not taken into consideration for the BMI communities in establishing a seasonal variation TMDL. Given the open exposed nature (all day sun) of the Squaw Creek Meadow reach, low flow or no flow conditions would prove to affect the aquatic habitat. Where as reference comparison sites with flow and shaded forested canopies would prove to be more of a favorable environment to support BMI communities.
12. None of the reference creek sites have sustained the land use impacts of the Squaw Creek watershed, historically, as briefly described in your background, the water shed has been disturbed since the 1800's by emigrants, ranchers, miners, and loggers, the Old Placer County Emigrant Route wagon road went up the south fork along Squaw Creek which is now virtually the same alignment as the "Summer Road and "Willow Flat Road" (Rosewood, 2002). There is also documentation depicting that the Federal government built roads and a Ranger Station for the Tahoe National Forest near the head of the meadow. Ski trails were also graded and the creek was then filled in and altered by the Army Corps of Engineers and the State of California in preparation for the 1960 Olympics, where the majority of the meadow area was used as a parking lot. Hence, the base line "reference" sites (creeks) can not represent suitable comparisons for a target TMDL of 50% sediment reduction.
13. The TMDL report seems to negate and discount the basic logic of how meadows are formed, expand and thrive, how they become fertile and foster plant and riparian growth. Why and how valley floors become and are fertile. The size, magnitude, beauty, and fauna, of the Squaw Creek Meadow are results of natural occurring sediment deposits and decades of non-point erosion. None of the reference site creeks provide a comparison basis such as the lower gradient reach of the meadow, given its size and biological make up. Moreover, given the size and composition of the meadow one could assume a higher numerical % of sediment loading due to natural causes than is depicted in the TMDL. In fact per the USGS, 1953, Squaw Creek did not follow one channel, but meandered in braided rivulets into marshy meadows in the low areas. A 1935 photograph shows the main channel of the creek in the meadow as now more than 18 inches with the edges indiscernible in the marsh grasses (Arrouge 1935).
14. The TMDL does not address all stake holders and seems biased as it levies the largest burden on SVSC. The TMDL fails to include other significant stake holders in addressing and meeting the goals of the proposed TMDL. These include 10 other commercial and condominium properties along and/or adjacent to Squaw Creek. Furthermore, it does not take into account the impacts of the roads and facilities constructed by the National Weather Service, or the Federal Aviation Administration, and their need to access Squaw Peak to maintain and utilize their equipment to provide their respective public benefits necessary for the general welfare of the people.
15. The TMDL does not factor in a value or reference margin of safety to address the current public recreational benefits associated with use surrounding the Creek (i.e., cross country skiing, golf, dog sledding, hey rides, horse back riding, mountain biking, hiking, alpine skiing, skating, etc.), that could be impacted by the TMDL.

16. There is no nexus between the "load allocations" and "percent reductions needed" to meet the TMDL.
17. The entire Squaw Creek TMDL study is based upon sediment delivery tons per year, as are the sediment load allocations. TMDL stands for "Total Maximum Daily Load" not TMYL. The courts have found that TMDLs must be based upon daily loading:
- "Specifically, the Environmental Protection Agency (EPA) takes the position that Congress, in the establishment of 'total maximum daily loads' to cap effluent discharges of 'suitable' pollutants into highly polluted waters, left room for EPA to establish seasonal or annual loads for those same pollutants.... Daily means daily, nothing else. If EPA believes using daily loads for certain types of pollutants has undesirable consequences, then it must either amend its regulation... or take its concerns to Congress." Friends of the Earth Inc. v. Environmental Protection Agency, Et. Al. United States Court of Appeals for the District of Columbia Circuit (2006).
18. Regional Water Control Board members did not incorporate independent expert testimony in regards to the serious inadequacies of the TMDL prior to and during their TMDL hearing when adopted on April 13, 2006.

In essence, Squaw Valley Ski Corp. feels that maintaining and enhance the water quality of Squaw Creek is of tantamount importance, however, this proposed TMDL lacks the sound science and baseline data to support the targeted sediment goals, and thus should not be adopted as regulatory amendment to the Basin Plan. Moreover, the reality is that the stipulated 50% sediment reduction goal is not feasible. With further study, refinement, and the inclusion of the Facilities Assessment (required by the Cleanup and Abatement Order) and the studies provided by Ecorp Consulting, Inc., the TMDL could be amended in such a manner that its targets are more realistic and based on solid reliable information.

Granted, the amount of effort and resources that the Regional Water Control Board has put into this TMDL is commendable; nonetheless, it is flawed and incomplete for the above mention reasons, this is verified through public and written testimony, hence, it still lacks solid background information and data to implement as a regulatory controlling measure for the general good of the public and health of the Squaw Creek Watershed. As section 105 of the Water Code states, "(It is hereby declared that the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State and that the State shall determine in what way the water of the State, both surface and underground, should be developed for the greatest public benefit." Therefore, in light of the conflicting evidence, it seems logical that it is the duty of the state and regional water control boards to take a more prudent thorough look and evaluation of the situation concerning adopting resolution R6T-2006-0017.

Thank for your time and consideration to these comments.
Respectfully,



Thomas Murphy

Squaw Valley Ski Corp.