CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

MEETING OF OCTOBER 7-8, 2008
South Lake Tahoe

ITEM NO. 5

SUBJECT: **STATUS OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN REGION (WATER BOARD) PROGRESS IN RESPONDING TO THE GOVERNOR'S PROCLAMATION AND THE CALIFORNIA-NEVADA TAHOE BASIN FIRE COMMISSION RECOMMENDATIONS**

DISCUSSION: The California-Nevada Tahoe Basin Fire Commission completed a final report of recommendations in March 2008. Some of the recommendations were directed at improving and facilitating regulatory involvement in fuel reduction efforts at Lake Tahoe. The Commission made both general and specific recommendations related to Water Board regulations and procedures.

In May 2008 the Governor of California issued a proclamation that strongly encouraged the Water Board to take expedited action to implement the recommendations of the California-Nevada Tahoe Basin Fire Commission related to the Water Board, or to develop findings why any recommendation (s) should not be implemented. The report and findings should be submitted to the Chair of the State Water Resources Control Board and the Secretary for Environmental Protection.

Enclosed is a list of the recommendations involving the Water Board. Next to each recommendation, the Water Board staff has identified the action taken or described actions proposed along with a time schedule.

The Water Board has already taken a number of steps to facilitate fuel reduction efforts in the Tahoe Basin. Streamlining the permitting process for fuel reduction projects was a major theme embodied in the Commission's recommendations. The Water Board will be considering a Memorandum of Understanding with the Tahoe Regional Planning Agency (TRPA) that will designate the TRPA as the

primary permitting entity for fuel reduction projects in the Tahoe Basin. Project proponents will no longer need to contact the Water Board or submit a permit application to the Water Board.

Water Board staff is developing a revised Timber Waiver to address Fire Commission recommendations and improve the current waiver process. Staff intends to bring this item to the Water Board for consideration at its January 2009, meeting. Mention of the draft revised Timber Waiver is for informational purposes only. Staff is not asking, or intending for the Water Board to pre-judge any proposed Timber Waiver revisions with this agenda item.

RECOM-MENDATION: The Water Board accepts the progress report and transmits it to The Chair of the State Water Resources Control Board and the Secretary for Environmental Protection in response to the Governor's Executive Order.

Enclosure Table of Water Board-related Fire Commission Recommendations and staff's responses.

ENCLOSURE 1

05-0003

Fire Commission Recommendations to the Water Board and Proposed Water Board Actions

Recommendation Summary	Water Board Action
Recommendation 1 The unique water quality and clarity that make Lake Tahoe a natural resource of global significance are dependent on protection from catastrophic wildfires in the Lake Tahoe Basin, and all public land management agencies, regulatory agencies, and private property owners must work together more effectively to implement fuel reduction projects designed and prioritized to minimize the risk of wildfires.	Water Board staff is currently working with partners to permit 2008 fuel reduction projects. Staff is also a participating member of the Tahoe Forest Fuels Team, an inter-disciplinary entity that has been created to fund, plan, and implement fuels reduction projects within the Tahoe Basin.
Recommendation 2 The Commission finds that catastrophic wildfire is a growing threat to life, property, and the environmental quality of the Lake Tahoe Basin, and recommends that the restoration of the Basin's forests to a more natural and fire-resilient condition should be a common and primary management goal of all public land management agencies, regulatory agencies, and private property owners in the Basin.	While water quality protection is the Water Board's primary mandate, the Water Board in October 2007, directed its staff to consider projects that restore Tahoe's forests to a fire resistant condition as public health and safety projects eligible for Basin Plan prohibition exemptions.
Recommendation 16: The Governors should require that the plans and policies of the Lahontan Regional Water Quality Control Board (LRWQCB) and the Tahoe Regional Planning Agency (TRPA) be updated to emphasize the importance of fuel reduction activities in the Tahoe Basin. Revisions of policies shall be focused on facilitating implementation of these projects, with the priority given to protection of life, property, and the environment, in that order.	The Water Board is required by the California Water Code to regulate activities which may affect the quality of the waters of the State to attain the highest water quality which is reasonable, considering all demands on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible. To this end, fuels reduction treatments that are protective of life, property and the environment are a priority to the Water Board. The Water Board's current Waiver of Waste Discharge Requirements for Discharge Related to Timber Harvest and Vegetation Management Activities (Timber Waiver) states: "Non-commercial fuels hazard reduction projects will receive top priority for review to allow operations to commence sooner than 30 days. If the project requires expedited review, project proponents should contact Water Board staff to arrange assistance and prompt review." (Timber Waiver, page 4).
Recommendation 17: The Governors should direct regulatory and implementing agencies in the Lake Tahoe Basin to simplify the existing system for permitting fuel	Staff's proposed MOU between the Water Board and TRPA (October 2008) streamlines permitting of vegetation management activities including fuels reduction in the Lake Tahoe Region by identifying the TRPA as the primary permitting authority. This action would usually eliminate the need for project proponents to seek a permit from the Lahontan Water Board.

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reduction projects. Steps that should be taken to reduce or eliminate complexity, confusion, and redundancy shall include: The Fire Commission identified twelve issues under the above heading. Those relevant to the Lahontan Water Board or its staff are addressed in Recommendations 17a, b, c, d, e, f, h, i, and j. below.	The Water Board will consider a revised waiver of waste discharge requirements for vegetation management activities (anticipated January 2009). In the event that a project proponent seeks a permit from the Water Board for vegetation management activities in the Tahoe Basin, the revised Conditional Waiver of Waste Discharge Requirements for Discharges Resulting from Timber Harvest and Vegetation Management Activities in the Lahontan Region (Timber Waiver) to be considered will allow an expanded group of fuel reduction activities to proceed with no notification to the Water Board, such as hand crew operations. For projects requiring Water Board notification, the revised Timber Waiver will provide simplified directions for application completion and monitoring checklists when visual monitoring is required. The revised Timber Waiver will include a blanket exemption to Basin Plan prohibitions for fuel reduction activities involving fill placement within 100-year floodplains and permanent soil disturbance within stream environment zones, and slopes over 30% of the Lake Tahoe Hydrologic Unit. The revised Timber Waiver will streamline permitting for fuel reduction efforts throughout the Lahontan Region. During 2009, the Water Board will consider additional actions to streamline & simplify permitting for fuel projects by amending the Basin Plan. Specific items for consideration may include clarification of allowable activities within SEZs.
Recommendation 17a: The regulatory restrictions and limitations presently existing, even as presently modified by the TRPA and the LRWQCB, should be further modified, if not waived, on an expeditious basis and no later than the beginning of the 2008 fire season, to allow the use of readily available mechanized equipment and vehicles within SEZs to allow for the effective, efficient, and economical removal of hazardous materials. Restrictions regarding the use of mechanized equipment in such areas should be greatly and substantially reduced to make such cleaning and clearing activities within SEZs feasible over the period of time reasonably necessary to complete the Community Wildfire Protection Projects relating to the various communities located within the Lake Tahoe Basin.	The Water Board Basin Plan and Timber Waiver specifically allow equipment into SEZs on existing roads and crossings and also allows for temporary new crossings of SEZs. The Basin Plan does not prohibit vehicles in SEZs; rather, it prohibits "permanent disturbance" in SEZs. The Basin Plan allows the Water Board and its Executive Officer to consider granting exemptions for permanent disturbance where the project is necessary for public health and safety and/or environmental protection. In July 2008, the Water Board delegated to the Executive Officer the authority to grant Basin Plan exemptions. This action eliminated the previous 45-90 day period needed to schedule these projects for formal Water Board action. The revised Timber Waiver will also grant exemptions for fuel reduction projects involving permanent disturbance in SEZs where project plans provide information on mitigation and confirm no long term water quality impacts will occur. The revised Timber Waiver also identifies activities, including the use of low ground pressure equipment within SEZs, that can occur without the need for a Basin Plan prohibition exemption. The Water Board will consider a Basin Plan amendment (anticipated June 2009) to clarify the use of mechanized equipment within SEZs for the purpose of fuels reduction.

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Recommendation 17b: The commission recommends that the LRWQCB and the TRPA in cooperation with land management agencies develop a common list of accepted BMPs for mechanical work in SEZs that will be used beginning in the 2008 season to qualify as exempt and qualified exempt projects. In addition to the BMPs used in 2008, a reference guide defining equipment use in SEZs shall be developed by March 2009 and reviewed and updated as new information is collected. This guide will be completed through a cooperative inter-agency effort. The TRPA and the LRWQCB MOUs shall rely on this adaptive process to allow SEZ disturbance as new BMPs are developed and implemented.	This recommendation could not be addressed in the timeline recommended. The Water Board is allowing the use of mechanized equipment in SEZs for projects that are similar to the Heavenly Valley Creek and Celio Ranch Demonstration projects. Also, the Tahoe Science Consortium is developing standardized monitoring protocols to evaluate BMPs for mechanical work in SEZs. The Water Board supports this recommendation, and will continue to incorporate knowledge gained from demonstration projects to guide permitting of future projects in SEZs.
Recommendation 17c: The Governors of the States of California and Nevada should request the TRPA Governing Board to expeditiously establish within its ordinances a clear definition, in plain English, setting forth standards as to what constitutes a stream environment zone for the purposes of clearing such areas of hazardous fuels. The standard should be adopted for the purposes of providing a standard that can be uniformly applied by all agencies having environmental regulatory authority in the Basin, eliminating subjective determinations as to such matters, and encouraging the removal of fuels materials from SEZs within populated areas of the Basin and the surrounding WUI. The definition should define SEZ areas in appropriate gradients of sensitivity to equipment use and should be applied uniformly on a Basin-wide basis. The Commission further recommends the TRPA: (1) update criteria for delineating SEZs on the ground; (2) incorporate the new natural Resources Conservation Service Soil Survey;	The TRPA developed a rapid assessment (RAM) for delineating SEZs for fuel reduction projects. The USFS has also developed a methodology to classify SEZ sensitivity for fuels reduction projects. The application of these methods was applied during the 2008 field season and adjustments (if any) will be made for 2009 to reflect any lessons learned. The Water Board applies the same definition of SEZs as the TRPA. The Water Board staff defer to the TRPA for SEZ delineation on non-federal lands and to the Forest Service for SEZ delineation on federal lands. In addressing the Fire Commission's request for clarification between SEZs and WLPZs, Water Board staff developed a table describing and comparing the Tahoe rules related to SEZs, the CA Forest Practice Rules related to WLPZs, the NV Forest Practice Rules related to water course protection, and the USFS rules related to riparian protection standards. This table is posted on the Water Board's website. This table was shared with the Fire Commission during the Vegetation Workshop conducted in February of 2008.

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and (3) clarify secondary criteria for delineating SEZs related to vegetation types, soil characteristics, and floodplain identification. A crosswalk will be developed to reference SEZs to watercourse and lake protection zones (WLPZs) in the California Forest Practice Rules. It is also recommended that the LRWQCB and all other state agencies having jurisdiction over environmental matters within the Basin should be directed by the respective Governors to apply the same uniform definition and standards in determining what constitutes a stream environment zone for their own regulatory purposes within the Tahoe Basin.	
Recommendation 17d: In the interim, and not to exceed October 2008, in the event the TRPA does not establish such a uniform definition of SEZ, the Governor of the State of California should direct, within the framework of his authority, all California agencies having jurisdiction over environmental matters within the Tahoe Basin, including the LRWQCB, to apply the provisions of the California Forest Practices Act relating to watercourse protection with regard to SEZs in the Basin. The standard practices prescribed by said Act are understood by potential contractors, and their use will eliminate an impediment to bidders for such fuel reduction projects in the Basin. Further, the Governor should require any deviation from the use of such standard forest practices that results in the imposition of stricter standards to be reported by the agency requiring such deviation with an explanation of the environmental and efficiency tradeoffs considered by such agency when requiring stricter standards to be applied.	At present, there has not been a need to apply the Forest Practice Rules Watercourse & Lake Protections Zone (WLPZ) criteria to fuel reduction work in the Basin. The Tahoe Fire and Fuels Team (TFFT) has been proceeding under the current uniform SEZ definition and has not encountered any issues to date. The TRPA definition for SEZs is used throughout the Tahoe Basin by all entities. The Water Board applies the same current definition of SEZs and relies on TRPA or the Forest Service for SEZ delineation.
Recommendation 17e: The Commission recommends the TRPA and	Water Board staff has found that some equipment use in SEZs will not cause permanent disturbance in SEZs and can proceed and comply with the existing prohibitions. Staff is

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the LRWQCB grant exceptions for disturbance within SEZs for the purposes of completing fuel reduction projects (with equipment) necessary to protect public health and safety as identified in the community wildfire protection plans. The Commission recommends both regulatory boards grant blanket exemptions to a group of fuel reduction prescriptions when the tools or operating procedures described in the Reference Guide (see "B" above) are developed and implemented.	proposing in the draft revised Timber Waiver to identify these activities. Additionally, in the revised Timber Waiver staff is proposing to include an exemption to Basin Plan prohibitions for certain public health and safety projects where permanent disturbance (e.g. roads, skid trails, burn piles, stream crossings) may occur. Project proponents will be required to submit a project description and mitigation/monitoring plan.
Recommendation 17f: The Commission recommends for fuel treatment projects with potentially significant environmental impacts, all affected regulatory agencies rely on a single or joint environmental analysis and review process (i.e. EIS/EIR) to reach agreement on project specifications, permit conditions, (if applicable), and monitoring.	The Water Board staff is in agreement with this recommendation and is working with the Forest Service to develop a single document for the South Shore Fuels Reduction Project.
Recommendation 17h: The Commission recommends allowing winter operations with heavy equipment for fuel reduction over snow or over frozen ground shall be allowed (not in SEZ) through the LRWQCB Waiver Category 1b or 1c Eligibility Criteria.	Water Board staff has included in the draft revised Timber Waiver a new Category 5 to allow winter operations with simplified monitoring requirements. The Water Board staff's rational for this proposal is that projects in Category 1 do not have any notification or monitoring requirements. The Water Board staff believes that over the snow operations have minimal effects when conditions are right, however conditions can change significantly in a 12 hour period and therefore visual monitoring and tracking of temperatures is needed to ensure operations occur during appropriate operating conditions. This new category 5, as drafted by staff, also allows over snow operations within SEZs.
Recommendation 17i: The Commission recommends the TRPA and the Lahontan Regional Water Quality Control Board make changes to existing waivers, memoranda of understanding, plans and ordinances such that forest treatment projects involving hand crews are no longer required to submit permit or waiver applications under any circumstances. Projects involving hand crews may be included in an annual spreadsheet submitted by April 1st and amended as needed	The revised draft Timber Waiver will include a new Category 2 that does not require Water Board notification for hand crew projects. (Revised Timber Waiver expected early 2009).

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by the project proponent each year to the Multi-Agency Coordination (MAC) Group or the Tahoe Fire and Fuels Team (TFFT) with project identification, project contact, acres to be treated, and location for all proposed hand thinning treatments. Project proponents may amend the spreadsheet as needed. All agencies and interested public shall have access to this information.	
Recommendation 17j: The Commission recommends the TRPA, the LRWQCB, USDA Forest Service, and other affected agencies amend their plan and ordinances to allow equipment use on slopes greater than 30% based on *current* and *future* technology, and current forest practices to ensure resource protection.	Under current rules the Water Board can allow demonstrations projects using equipment on slopes greater than 30%. The data collected from these demonstration projects will be used to develop standard practices for necessary fuel reduction activities on steep slopes. No projects have been proposed and conducted that had a sufficient monitoring component to provide the necessary data to qualify as a standard practice. Additionally, Water Board can allow permanent disturbance on steep slopes for public service facilities (e.g. new fire station, or new roads) necessary for public health and safety or environmental protection. The Water Board plans to consider a Basin Plan amendment in late 2009 to further describe allowable activities and disturbances associated with tree removal for fuel reduction/fire prevention purposes.
Recommendation 25: The Commission recommends that the USDA Forest Service and the LRWQCB review their MOU and revise any stipulations that impede project planning and implementation related to fuels projects and associated supporting activities.	The proposed Vegetation Management MOU between the Water Board and the TRPA designates the TRPA as the primary permitting authority for vegetation management activities in the Lake Tahoe Region. The Water Board will consider approval October 7, 2008. Since the MOU places TRPA as primary permitting authority, TRPA would review and permit LTBMU vegetation management projects and Water Board permitting would be eliminated. Therefore at this time, a specific MOU between the Water Board and the LTBMU regarding vegetation management activities is not needed. The existing MOU between the Water Board and the LTBMU addresses other non-vegetation management activities, such as stream restoration, recreation and water quality improvements and will be considered for revision in 2009.
Recommendation 26: It is recommended that the Governor of the State of California direct, within the framework of his legal authority, the Lahontan Regional Water Quality Control Board (LRWQCB) to transfer to the TRPA no later than October 1, 2008, by a suitable MOU, all responsibility of the LRWQCB relating to fuel reduction projects performed within the Tahoe Basin. The intent is to have an expedited single permitting process,	The Water Board will consider approval of Vegetation Management MOU with TRPA at its October 7-8, 2008 meeting.

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eliminating the need for the LRWQCB to issue a second permit, and to achieve consistency in the application of environmental laws as relates to these kinds of projects in the Tahoe Basin. In addition, pursue the execution of a Management Agency Agreement (MAA) between the State Water Resources Control Board (SWRCB) and the TRPA in accordance with SWRCB existing policy for non-point discharge. Consideration of an MAA while not expected for several months is not intended to be, nor shall it be considered a basis for, delay in execution of the MOU between the LRWQCB and the Tahoe Regional Planning Agency.	
Recommendation 27: It is recommended that the Governor of the State of California, within the framework of his legal authority, direct the LRWQCB to request comments from the TRPA Governing Board prior to enacting any new regulations and/or revised interpretations of existing regulations relating to or otherwise affecting removal or mitigation of fire hazards.	Water Board staff solicits comments from all affected public and responsible agencies when promulgating regulations. The proposed vegetation MOU will provide for cooperation and collaboration between Water Board and TRPA.
Recommendation 29: It is recommended that the Director of CAL FIRE be empowered by the Governor of the state of California to monitor, and report to the Governor the progress on, the development of the MOU between the LRWQCB and the TRPA with regard to reduction of fire hazards. It is further recommended that the final MOU be submitted to, and be subject to the prior review and comment by the Director of CAL FIRE.	The public review process for the MOU has included CAL FIRE. The Governor in his Proclamation required the Secretaries for the California Resources Agency and California Environmental Protection to monitor implementation of the actions required by the Proclamation.
Recommendation 32: The Commission recommends that the Lahontan Regional Water Quality Control Board Executive Officer issue a letter clarifying that its existing MOU with the TRPA for residential construction constitutes a waiver of waste	On January 24, 2008, the Water Board's Executive Officer issued a letter clarifying the existing MOU between TRPA and the Water Board: "Clarification of Responsibility to Regulate Tree Removal Related to Residential and Commercial Development." These projects no longer require authorization by the Water Board under the Timber Waiver.

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discharge requirements for new residential construction, including tree and vegetation removal, therefore eliminating the need for a permit from the Lahontan Regional Water Quality Control Board.	
Recommendation 34: The Commission recommends that the Lahontan Regional Water Quality Control Board expand Category 1A of its timber waiver to include urban lots, including lots containing SEZs, managed by Federal, California State or local governments within the Lake Tahoe Basin. This will eliminate the need for these land management agencies to notify or pay a fee to the LRWQCB to reduce fuel loads on such lots.	The revised Timber Waiver includes language adding urban lot projects to the revised Category 1, which does not require project proponents to notify the Water Board of their proposed activities.
Recommendation 50b: Request and/or direct the TRPA, the Lahontan Regional Water Quality Control Board, and other State agencies having jurisdiction in the Angora Fire area, to expedite the permitting process to allow such tree removals including, if necessary, the waiver of any regulatory requirements that may impede such timber removal.	Emergency tree removal conducted during the summer of 2007 was automatically permitted under Category 6 of the existing Timber Waiver. The Water Board received a Timber Waiver application in summer 2008 from the USFS-LTBMU for the Angora hazard tree removal project. The Timber Waiver was granted and the project is being conducted fall 2008.
Recommendation 56d: The Governors should encourage forest thinning and woody biomass-to-energy processing in the Tahoe Basin as essential components of restoring healthy forest conditions, reducing the severity and intensity of future wildfires, lowering air and water pollution, and reducing local production of greenhouse gases. Specific actions should Include: **d.** Direct state agencies and encourage all agencies to streamline access to biomass materials, including ensuring access through and within SEZs and use of temporary roading.	The Basin Plan and existing Timber Waiver allow equipment into SEZs on existing roads and for the construction of new temporary SEZ crossings. The Basin Plan does not prohibit vehicles in SEZs; rather, it prohibits "permanent disturbance" in SEZs. The Water Board considers exemptions to this prohibition for projects needed for public health and safety or environmental protection including wildfire protection projects proposing permanent disturbance such as a new permanent road and crossing of an SEZ.
Recommendation 67:	The Basin Plan and existing Timber Waiver allow equipment into SEZs on existing roads and for

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The Governors should direct the TRPA, the Lahontan Regional Water Quality Control Board, and other Lake Tahoe Basin regulatory agencies to review and revise current policies, as appropriate, to fully implement the use of temporary access roads and mechanized equipment to expedite forest health and fuel reduction projects for the purpose of reducing the risk of catastrophic wildfire. In an effort to minimize soil erosion and potential impacts to water quality, a project specific plan shall be developed to include the design, construction, operation and ultimate reclamation of temporary access roads. Appropriate best management practices, (BMPs), shall be included in the project plan consistent with Nevada and California Forest Practices Acts, revised statutes, TRPA Codes, and applicable federal land management guidance documents.	the construction of temporary SEZ crossings. The Basin Plan does not prohibit vehicles in SEZs; rather, it prohibits "permanent disturbance" in SEZs. Projects that will not cause long-term impacts are currently allowed under the Basin Plan and the existing Timber Waiver. The revised Timber Waiver will grant exemptions to the prohibitions where the required findings can be made to ensure the project is needed for public health and safety, no reasonable alternatives exist to reduce impacts, and impacts are mitigated.
Recommendation 70: The Commission recommends that the Lahontan Regional Water Quality Control Board change the interpretation of their regulations to allow pile burning and the spreading of chipped material in SEZs.	The Water Board Basin Plan allows chipping in SEZs, under the condition that chips are not placed where there is a chance of delivery to a watercourse. The Water Board has approved a plan for pile burning in a SEZs where soils contain little or no organic material (this condition limits soil disturbance and impacts), this project is being implemented in September, 2008. Water Board staff have been involved with the science community to develop mitigation measures that can be incorporated into SEZ pile burning activities. The Water Board will continue to work with stakeholders to develop common sense practices that facilitate needed fuel reduction efforts while providing appropriate water quality protections. Water Board staff is proposing a blanket prohibition exemption in the draft revised Timber Waiver that will allow for pile burning to occur within SEZs under some circumstances.

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