

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

**MEETING OF JULY 14, 2010**

South Lake Tahoe/Victorville

- ITEM:** 7
- SUBJECT:** **RESOLUTION DELEGATING AUTHORITY TO THE EXECUTIVE OFFICER TO ISSUE ADMINISTRATIVE CIVIL LIABILITY ORDERS**
- CHRONOLOGY:** This is a new item before the Water Board
- ISSUES:** Should the Water Board adopt a resolution expressly granting the Executive Officer the authority to issue administrative civil liability orders when no Board hearing is required?
- DISCUSSION:** The Porter-Cologne Water Quality Control Act (California Water Code, Division 7) allows the Regional Water Quality Control Boards (Regional Water Boards) to delegate to their Executive Officers any of their powers and duties under the Porter-Cologne Act except for the following (Water Code section 13223, subdivision (a)):
- a. The promulgation of any regulations;
  - b. The issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirements;
  - c. The issuance, modification, or revocation of any cease and desist order;
  - d. The holding of any hearing on water quality control plans; and
  - e. The application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding the cases described in Water Code sections 13002, subdivision (c), 13304 and 13340.

The nine Regional Water Boards have acted to delegate to their Executive Officers all of the powers and duties they may legally delegate, consistent with Water Code section 13223, subdivision (a). The Lahontan Water Board made this delegation though Resolution 6-90-72.

Water Code section 13323, subdivision (a) authorizes the Executive Officer of a Regional Water Board to issue administrative civil liability (ACL) complaints. Lahontan Water Board Executive Officer, Harold Singer, has delegated this authority to Assistant Executive Officer, Lauri Kemper, and to Cleanup and Enforcement Division Manager, Chuck Curtis, to maintain a separation of functions associated with the prosecution of ACL complaints. The Water Code provides the right to the discharger to have a hearing before the Regional Water Board to contest an ACL complaint. Alternatively, the discharger may waive the right to a hearing and pay the amount alleged in the ACL complaint. (Wat. Code §13323, subd. (b).)

The California Administrative Procedures Act (APA) authorizes the Regional Water Boards to settle adjudicative matters without a hearing and provides that the authority to approve a settlement may be delegated. (See Gov. Code § 11415.60.)

Historically, the resolution of ACL complaints by Regional Water Boards generally has occurred in one of three ways: (1) If the discharger contested the complaint, the Regional Water Board held an adjudicative hearing and issued an ACL Order following the hearing. (2) If the discharger did not contest the complaint, the Regional Water Board issued an ACL Order without a hearing. (3) If the discharger did not contest the complaint, the Executive Officer settled the ACL complaint by entering into a settlement agreement with the discharger pursuant to a general delegation and the APA and no ACL Order was issued.

An ACL Order is the preferred method to resolve ACL complaints, including ACL complaints (1) where the discharger does not contest the complaint and ask for a hearing and is willing to pay the full amount of the proposed liability and (2) where the discharger has waived their right to a hearing and the discharger and the enforcement staff have reached an agreement to resolve the complaint. ACL Orders are more easily enforceable than stand-alone settlement agreements because the Water Code provides specific remedies for collecting unpaid ACL Orders.

Orders imposing administrative civil liability are issued by the Lahontan Water Board pursuant to its authority in Water

Code section 13323 to assess discretionary liability imposed through Water Code sections 13308, 13268, 13350 and 13385 and mandatory minimum penalties under Water Code section 13385.

While the Lahontan Water Board's general delegation contained in Resolution 6-90-72 implicitly delegated the Executive Officer the authority to issue ACL Orders when a hearing is not necessary (because issuance of an ACL Order is not one of the excepted powers under Water Code section 13223, subdivision (a)), the Executive Officer has not historically exercised this delegated authority. Therefore, if the Lahontan Water Board wishes to authorize its Executive Officer to issue certain types of ACL Orders where a hearing is not required, it would be prudent that the delegation be explicit so that the authority for such a new practice is clearly expressed to the public and the regulated community.

In recent years, several other Regional Water Boards have acted to explicitly delegate to their Executive Officers the authority to issue ACL Orders where no hearing is required. They have done so with varying degrees of direction as to the factors the Executive Officer should consider in determining whether to exercise the authority in a particular case. The enclosed table describes other Regional Water Board's delegation direction related to issuing ACL Orders.

The enclosed proposed delegation resolution gives the broadest authority to the Executive Officer to issue ACL Orders where no hearing is required. The Lahontan Water Board may wish to consider whether to place explicit limits on the type of ACL Order the Executive Officer may issue. As identified in the table, two Regional Water Boards have put liability amount limits on the ACL Orders their Executive Officers may issue. Another consideration is whether to limit the authority to cash only settlements, that is, those not including a Supplemental Environmental Project (SEP), Compliance Project (CP), or Enhanced Compliance Action (ECA). Another issue to consider is whether to limit Executive Officer issuance of ACL Orders that incorporate a scheduled payment plan over time.

Pursuant to federal regulation (40CFR123.27(d)(2)(ii)) and the State Water Resources Control Board's Enforcement Policy, a 30-day public comment period is required prior to acceptance of any settlement or imposition of any ACL

Order. Following the review of any comments, the Executive Officer may determine (1) that the ACL Order not be issued or that the ACL Order be modified or (2) that the matter is more appropriate for consideration by the Lahontan Water Board at a regularly scheduled meeting. Also during the public comment period, any member of the Lahontan Water Board may request the Executive Officer to bring the item before the Board for consideration.

**RECOMMENDATION:**

Adopt the Resolution as proposed.

Enclosures:

1. Proposed Resolution
2. Regional Water Board ACL Order Delegations

# **ENCLOSURE 1**



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

**RESOLUTION NO. R6V-2010-(PROPOSED)**

**DELEGATION OF AUTHORITY TO EXECUTIVE OFFICER TO ISSUE  
ADMINISTRATIVE CIVIL LIABILITY ORDERS**

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

1. The Porter-Cologne Water Quality Control Act (California Water Code section 13223, subdivision (a)), provides that a regional water board may delegate any of its powers and duties to its Executive Officer excepting only the following:
  - a. The promulgation of any regulations;
  - b. The issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirements;
  - c. The issuance, modification, or revocation of any cease and desist order;
  - d. The holding of any hearing on water quality control plans; and
  - e. The application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding the cases described in Water Code sections 13002, subdivision (c), 13304 and 13340.
2. Water Code section 13223, subdivision (b) states that whenever any reference is made in Division 7 of the Water Code to any action that may be taken by a regional water board, such reference includes such action by its Executive Officer pursuant to powers and duties delegated to the Executive Officer by the regional water board.
3. The Lahontan Water Board previously delegated to its Executive Officer, under the general direction and control of the Board, all of the powers and duties of the Board under Division 7 of the Water Code except those specified in Water Code section 13223, subdivision (a), and except for the authority to state Lahontan Water Board policy, create procedure to be followed by the Executive Officer, and approve closure plans under Water Code section 13227 that do not adhere to the minimum standards of in Title 27, Division 2, Chapter 4, Subchapter 4 and where an engineered alternative is proposed.
4. The Executive Officer or his/her delegate may issue a complaint pursuant to Water Code section 13323 to a person on whom administrative civil liability may be imposed pursuant to Water Code sections 13308, 13328, 13350, and 13385. If the discharger contests the complaint, a hearing is held to accept evidence, and the Lahontan Water Board makes a decision on the matter.

5. Where a discharger does not contest a proposed administrative civil liability, the discharger may waive the right to a hearing before the Lahontan Water Board. Alternatively, Lahontan Water Board prosecution staff may come to agreement with a discharger on settlement of alleged liabilities with or without the issuance of a complaint, and the discharger waives the right to a hearing on the matter. In either situation, the case is settled through an order of the Board, following a 30-day public comment period on the proposed order.
6. A significant savings of Lahontan Water Board staff resources and associated expenses may be saved by having the Executive Officer settle uncontested liability orders when no hearing is required.
7. While the Lahontan Water Board has previously delegated to the Executive Officer its powers and duties to the maximum extent allowed by Water Code section 13223 (with certain exceptions), it is nonetheless appropriate to explicitly affirm the Lahontan Water Board's intent to allow the Executive Officer to impose administrative liability through the issuance of administrative civil liability orders pursuant to Water Code sections 13308, 13328, 13350, and 13385 when no hearing is required.

**THEREFORE BE IT RESOLVED THAT:**

The California Regional Water Quality Control Board, Lahontan Region, hereby expressly delegates to its Executive Officer, under general direction and control of the Board, the authority to issue final administrative civil liability orders where no hearing is required.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on July 14, 2010.

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HAROLD J. SINGER  
EXECUTIVE OFFICER

**ENCLOSURE 2**



## REGIONAL WATER BOARD ACL ORDER DELEGATIONS

<b>Region</b>	<b>Limits or Direction</b>
1	No explicit delegation
2	No specific limits or direction
3	\$300,000 or less (given by oral direction)
4	\$50,000 or less and potential maximum civil liability is less than \$100,000. Executive Officer may exceed these limits when the EO determines, in consultation with the Board Chair, that the matter is not controversial or likely to generate significant debate among the full Board
5	No specific limits or direction
6	No explicit delegation
7	No explicit delegation
8	No explicit delegation
9	No explicit delegation