CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

MEETING OF JULY 8-9, 2015
SOUTH LAKE TAHOE

ITEM: **6**

SUBJECT: **UPDATED DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER**

ISSUE: Over the past 25 years, the Lahontan Regional Water Quality Control Board (Lahontan Water Board) has adopted a number of resolutions delegating Water Board powers to its Executive Officer. Because these actions pre-date many current policies, delegated authority resolutions now conflict with Water Quality Control Plan (Basin Plan) amendments and overlapping resolutions create confusion. There are also outdated references that should be changed to improve Water Board processes.

Should the Water Board consolidate various delegation resolutions into a new, single resolution to address outdated resolutions and ensure consistency with existing law and the current Basin Plan?

BACK-GROUND: California Water Code section 13223 allows the Water Board to delegate its powers and duties to its Executive Officer with the exception of five (5) specific items:

a. Promulgating regulations;

b. Issuing, modifying, or revoking any water quality control plan;

c. Issuing, modifying, or revoking any water quality objectives;

d. Issuing, modifying, or revoking any waste discharge requirements;

e. Issuing, modifying, or revoking any cease and desist order;

f. Holding any hearing on water quality control plans; or

g. Applying to the Attorney General for judicial enforcement unless there has been an explicit delegation in a cease and desist order that authorizes the application for judicial enforcement, or unless the judicial enforcement involves a request to the Attorney General to bring an action in the name of the people of the State of

California to enjoin any pollution or nuisance or unless the judicial enforcement involves Water Code section 13304 or 13340.

Consistent with other regions, the Lahontan Water Board exercised this authority with a resolution that delegated all of its authority to the Executive Officer with the exception of those powers listed in Water Code section13223 (a). Subsequently, the Water Board adopted several additional resolutions that explicitly or implicitly clarified authorities delegated to the Executive Officer for specific policies. Many delegated authority resolutions are decades old, and in some cases conflict with current law and regulations.

CHRONOL-OGY:

1990 - Water Board Resolution No. 6-90-72 (Enclosure 2) delegates all powers and duties of the Water Board to the Executive Officer with exceptions specified by California Water Code section 13223. The resolution also reserves the Board's authority to "state Board policy and create procedure to be followed by the Executive Officer" for a list of eight (8) specific items.

1991 - Water Board Resolution 6-91-938 (Enclosure 3) delegates the Board's authority to the Executive Officer to accept preliminary waste facility closure plans meeting minimum standards under California Code of Regulations Title 23, Chapter 15 (now Title 27, Chapter 3, section 21769). In accordance with this resolution, all preliminary waste facility closure plans that *do not* meet the minimum standards set by the referenced regulation must be brought to the Board for public hearing and consideration. Preliminary closure plans that meet applicable specifications may be accepted by the Executive Officer.

1993 - Water Board Resolution No. 6-93-08 (Enclosure 4) delegated to the Executive Officer the authority to grant certain exemptions to waste discharge prohibitions in the Lake Tahoe and Truckee River hydrologic units. While the Executive Officer was granted the power to issue prohibition exemptions by Resolution No. 6-90-72, Resolution No. 6-93-08 set procedural requirements for that action.

2000 - Water Board Resolution 6-00-96 (Enclosure 5) delegates the Board's authority to the Executive Officer to grant prohibition exemptions in emergency situations and in instances where the Board lacks a quorum.

2008 - Water Board Resolution No. R6T-2008-0031 (Enclosure 6) delegated Water Board authority to the Executive Officer to grant certain exemptions in the Lake Tahoe, Truckee River and

Little Truckee River hydrologic units. The resolution limits such authority to those cases specifically granted in prior resolutions of the Water Board (notwithstanding Resolution 6-90-72), by size, or as specifically listed in the Basin Plan.

2010 – Water Board Resolution R6T-2010-0034 (Enclosure 7) explicitly delegates the Board's authority to issue Administrative Civil Liability orders when no hearing is required.

2014 - Water Board adopted amendments to the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) that included changes to waste discharge prohibitions, exemptions and authority to grant exemptions.

May 13, 2015 – Water Board staff presented options to the Board for consolidating and updating delegated authorities. Water Board members provided direction regarding an updated resolution.

DISCUSSION : Following a staff presentation on the current state of delegated authorities, Water Board members provided feedback to draft a single updated resolution that clarifies the Water Board's intent and rescinds previous resolutions while maintaining a robust process for Water Board and public feedback.

The Water Board Executive Officer acts on the Water Board's behalf daily. While the vast majority of the actions taken are non-controversial, opportunities for public and Water Board member review and comment exist throughout the system to ensure interested parties retain the chance to engage. The following table describes representative actions taken by the Water Board Executive Officer, the current state of practice regarding public and Water Board member notification, and the frequency the actions are taken during the past three years.

Action	Notice Period	Frequency
No Further Action Required letters (UST cases)	60-day public notification EO Report summary.	Approximately 20/year
401 Water Quality Certification	Online list of pending certifications (updated approximately monthly).	Approximately 35/year
General Permit Notices of Applicability	Included in EO report when appropriate.	Approximately 6/year
Monitoring and Reporting Plan Revision	Included in EO report when appropriate.	Approximately 3/year
Basin Plan Prohibition Exceptions	10-day notice to both public and Water Board members.	Approximately 10/year

Cleanup and Abatement Orders	30-day public comment period. EO consults with Water Board members as appropriate.	Approximately 3/year
Section 13267 Orders	Twenty-four hour notice to Discharger and copied to interested persons and Water Board members .	Approximately 5/year

*Frequency values are estimates only based on available data for actions taken during the 2013, 2014, and 2015 calendar years.

The Water Board Executive Officer also routinely updates the Board and public about delegated actions in the monthly Executive Officer's report, the quarterly violations report and regular reports on standing items. Current practices ensure regular oversight of the Executive Officers' use of delegated authority.

After reviewing delegated authority resolutions prepared by other regions and considering feedback received at the May 2015 Water Board meeting, staff prepared a draft resolution that aligns delegated authority with current laws and practice while maintaining appropriate opportunities for Water Board member and stakeholder feedback. The proposed resolution rescinds outdated delegation resolutions and aligns with Water Board member direction.

RECOMMEND-ATION: Adopt the Updated Delegation of Authority to the Executive Officer Resolution as proposed.

ENCLOSURE	ITEM	Bates Number
1	Proposed Resolution R6T-2015-PROPOSED	**6-7**
2	Resolution No. 6-90-72 – Delegating all power to the Executive Officer allowed by law	**6-11**
3	Resolution No. 6-91-938 – Clarifying delegated authority regarding preliminary site closure plans	**6-15**
4	Resolution No. 6-93-08 – Clarifying authority to grant prohibition exemptions	**6-21**
5	Resolution No. 6-00-96 – Clarifying authority to grant prohibition exemptions in emergencies	**6-29**
6	Resolution No. R6T-2008-0031 – Further clarifying authority to grant prohibition exemptions	**6-39**
7	Resolution No. R6T-2010-0034 – Clarifying authority to issue final ACL orders when no hearing is required	**6-51**
8	Staff Power Point Presentation	**6-55**

ENCLOSURE 1

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2015-PROPOSED

UPDATED DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER

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

1. The Executive Officer is the Water Board's confidential employee appointed pursuant to Water Code section 13220, subdivision (c).

2. Water Code section 13223, subdivision (a) authorizes the Water Board to delegate to the Executive Officer any powers and duties vested in it by the Porter Cologne Water Quality Control Act, except the authority to: (1) promulgate any regulation; (2) issue, modify, or revoke any water quality control plan, water quality objective, or waste discharge requirement; (3) issue, modify, or revoke any cease and desist order; (4) hold any hearing on water quality control plans; and (5) apply to the Attorney General for judicial enforcement. These limitations exclude specific delegation in a cease and desist order and excluding cases described in Water Code section 13002, subdivision (c), 13304 and 13340.

3. Orderly and efficient Water Board operation requires the Executive Officer to be able to carry out the Water Board's day-to-day powers and duties to the maximum extent authorized by Water Code section 13223.

4. The Water Board's obligations to California and Lahontan Region citizens require the Water Board to retain the power and duty to act on any item within its jurisdiction, even if the Executive Officer would typically carry out that power or have the authority pursuant to this delegation.

5. Although the Water Board has previously delegated its powers and duties to the Executive Officer to the maximum extent allowed by Water Code section 13223 and described specific delegations in multiple resolutions, it is appropriate to update the delegation to reaffirm the Water Board's intent and rescind previous resolutions that are outdated and inconsistent with current regulations.

6. Nothing in this delegation is intended to diminish the force, effect or validity of any action the Executive Officer has previously taken in the name of the Water Board.

THEREFORE BE IT RESOLVED:

1. The Water Board delegates to its Executive officer all the powers and duties to conduct and supervise Water Board activities.

2. The Executive Officer is specifically precluded from taking the following actions:

    a. Promulgating regulations;

    b. Issuing, modifying, or revoking any water quality control plan;

c. Issuing, modifying, or revoking any water quality objectives;

d. Issuing, modifying, or revoking any waste discharge requirements;

e. Issuing, modifying, or revoking any cease and desist order;

f. Holding any hearing on water quality control plans; or

g. Applying to the Attorney General for judicial enforcement unless there has been an explicit delegation in a cease and desist order that authorizes the application for judicial enforcement, or unless the judicial enforcement involves a request to the Attorney General to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance or unless the judicial enforcement involves Water Code section 13304 or 13340.

3. In exercising the authority herein delegated, the Water Board directs the Executive Officer, without restricting the authority specified, to bring items before the Water Board in a public meeting when:

   a. Requested by board members; or

   b. the Executive Officer determines the item should be brought to a Water Board public meeting

4. In exercising the Water Board's delegated authority, the Executive Officer should consider whether the action departs from established Water Board policy or is of significant stakeholder interest.

5. The Water Board may revoke in whole or in part any specific or implied delegation to the Executive Officer.

6. Resolution Nos. 6-90-72, 6-91-938, 6-93-08, 6-00-96, R6T-2008-0031, and R6T-2010-0034 are hereby rescinded.

I, Patty Z. Kouyoumdjian, 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 9, 2015.

_____
PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

ENCLOSURE 2

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. 6-90-72

DELEGATING CERTAIN POWERS AND DUTIES
TO THE EXECUTIVE OFFICER

WHEREAS Section 13223 of the Porter-Cologne Water Quality Control Act provides that the Regional Board may delegate any of its powers and duties, with certain exceptions, to its Executive Officer; therefore be it

RESOLVED that the California Regional Water Quality Control Board, Lahontan Region, does hereby delegate 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 California Water Code except those specified in Section 13223(a); and be it further

RESOLVED that the Regional Board reserves the authority to state Board policy and create procedure to be followed by the Executive Officer. The stating of Board policy will include but not be limited to the following:

1. Establishment of office location priorities [Sec. 13220(a)]

2. Policy statements (Sec. 13224)

3. Recommend financial assistance projects [Sec. 13225(e)]

4. Classify disposal sites (Sec. 13226)

5. Approve closure plans [Sec. 13227(b)]

6. Condition plan approvals [Sec. 13227(c)]

7. Hearing [Sec. 13305(d)]

8. Elevate inter Regional Board disputes [Sec. 13320(d)]

RESOLVED that the Executive Officer is authorized, and he is hereby directed, to certify and submit copies of this Resolution to such agencies and individuals as may have need therefore or as may request same.

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 November 9, 1990.

Harold J. Singer

HAROLD J. SINGER
EXECUTIVE OFFICER

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ENCLOSURE 3

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. 6-91-938

DELEGATING AUTHORITY TO THE EXECUTIVE OFFICER
TO APPROVE CLOSURE PLANS FOR WASTE MANAGEMENT UNITS

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

1. Government Code Section 43501 (3)(b) requires that the owner or operator of a solid waste facility submit to the Regional Board a plan for the closure of that facility and a plan for the post-closure maintenance of the facility.

2. Water Code Section 13227 requires that the Regional Board review the facility closure and post-closure plans to ensure that water quality is adequately protected during closure and the post-closure maintenance period, and the Regional Board is to approve the facility closure and post-closure plans if it finds that the plans comply with applicable state and federal laws and regulations relating to water quality protection and monitoring.

3. When a closure plan, preliminary or final, is received by the Regional Board, Board staff has 30 days to determine whether the plan is complete. Lacking a determination within 30 days, the plan is deemed complete by default. Completeness of a closure plan is determined in accordance with Article 9 of Chapter 15, California Code of Regulations.

4. When a plan has been deemed complete, either by Regional Board staff's determination or by default, Regional Board staff has 30 additional days, for a Preliminary Closure Plan, or 60 additional days, for a Final Closure Plan, to provide comments on the plan to the California Integrated Waste Management Board (CIWMB).

5. Following the submittal of comments to the CIWMB, the Regional Board has 60 additional days, for a Preliminary Closure Plan, or 30 additional days, for a Final Closure Plan, to approve or disapprove the Plan.

6. If the Regional Board does not approve or disapprove a Closure Plan within the additive 120 day timeframe commencing with the receipt of a complete closure plan, the plan is deemed acceptable by default.

7. The CIWMB bases its determination of the completeness of a given closure plan on a comparison of the plan with the required list provided in Government Code Section 18260, et seq. Once the plan is deemed complete, the CIWMB reviews the plan to determine whether the conclusions are technically supportable. As described in finding No. 3, the Regional Board's completeness determination will include both an initial review to ensure that all the required sections have been submitted and a technical review of the plan. Therefore, the Regional Board intends to eliminate the comment step described in Finding No. 4, in that comments will be sent along with a determination the the plan is incomplete.

8. The Regional Board previously delegated authority to the Executive Officer to approve or deny preliminary or final closure plans in Resolution No. 6-91-927, adopted August 8, 1991. The Regional Board based its adoption of that Resolution on the following considerations:

   a. Due to the timeframes involved in processing a closure plan, delegating authority to the Executive Officer to approve a closure plan would allow the closure plan to be more thoroughly reviewed and would allow time for the owner/operator to address all Regional Board staff comments; and

   b. Delegating authority to the Executive Officer would allow the closure plan to be approved/disapproved in a more timely manner, and decrease the possibility of approval or acceptance by default.

9. The Regional Board has reevaluated its decision to delegate authority to the Executive Officer to approve or deny preliminary or final closure plans.

10. Due to the importance and potential environmental impacts of the closure process of a given waste management unit, all but the most straightforward, preliminary closure plans should be considered in a public hearing, allowing all affected and interested parties an opportunity to provide input.

11. Section 13223 of the California Water Code allows a Regional Board to delegate specific powers and duties to its Executive Officer including approval of closure plans. The power to determine the completeness of a closure plan, which is equivalent to a Report of Waste Discharge, has already been delegated.

12. The Regional Board, during a meeting on November 14, 1991 in Lancaster, Los Angeles County, considered all evidence concerning this matter.

THEREFORE, BE IT RESOLVED THAT:

1. Resolution No. 6-91-927 is hereby rescinded.

2. The Regional Board delegates authority to the Executive Officer to approve or disapprove preliminary closure and post-closure maintenance plans for waste management units, when those plans adhere to the minimum standards of Chapter 15 and do not propose an engineered alternative.

3. With the exception of plans described in Resolved 2. above, all closure and post-closure maintenance plans will be brought before the Regional Board for approval or disapproval.

4. The Executive Officer shall notify the Board and interested members of the public of his intent to approve or disapprove a closure plan subject to this Resolution.

5. The Executive Officer shall submit a report to the Regional Board at regularly scheduled Board meetings listing the closure and post-closure maintenance plans approved or disapproved subject to this Resolution since the last notification.

6. This action delegating authority to the Executive Officer to approve closure and post-closure maintenance plans is conditional and the Executive Officer may recommend that a plan go before the Board for approval.

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 November 14, 1991.

Harold J. Singer

HAROLD J. SINGER
EXECUTIVE OFFICER

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ENCLOSURE 4

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. 6-93-08

DELEGATING AUTHORITY TO THE EXECUTIVE OFFICER TO GRANT EXCEPTIONS TO BASIN PLAN PROHIBITIONS REGARDING DISCHARGES OF EARTHEN MATERIALS TO FLOODPLAINS AND STREAM ENVIRONMENT ZONES

WHEREAS, The California Regional Water Quality Control Board, Lahontan Region finds that:

1. Water Code Section 13260(a) requires that any person discharging waste or proposing to discharge waste within the Region, other than to a community sewer system, that could affect the quality of the waters of the state, shall file a report of waste discharge.

2. The California Regional Water Quality Control Board, Lahontan Region, has a statutory obligation to prescribe waste discharge requirements for the discharge of any waste that could affect water quality except that waste discharge requirements may be waived when it is not against the public interest pursuant to California Water Code Section 13269.

3. The Regional Board adopted Resolution No. 6-88-18, "Waiver of Waste Discharge Requirements for Specific Types of Discharges" which specifies the types of projects for which the Executive Officer can waive Waste Discharge Requirements.

4. The Regional Board adopted General Waste Discharge Requirements, Board Order No. 6-91-31, regulating discharges from the construction of small commercial, multi-family residential, utility and public works projects within the Tahoe Basin. The General Permit allows the Executive Officer to issue a Notice of Applicability for specific projects, thus allowing construction to proceed under provisions of the General Waste Discharge Requirements.

5. The Water Quality Control Plan for the North Lahontan Basin (North Lahontan Basin Plan), as amended, prohibits the discharge or threatened discharge attributable to human activities of solid or liquid waste materials including soil, silt, clay, sand and other organic and earthen materials, due to the placement of said materials below the highwater rim of Lake Tahoe or within the 100-year flood plain of the Truckee River or any tributary to Lake Tahoe or the Truckee River.

6. The North Lahontan Basin Plan allows an exception to the prohibitions of Finding No. 5 for the Truckee River and Little Truckee River Hydrologic Units for only the following types of projects:

   - projects solely intended to reduce or mitigate existing sources of erosion or water pollution
   - bridge abutments and approaches and other essential transportation facilities identified in a County plan
   - projects necessary to protect public health or safety or to provide essential public services
   - projects necessary for public recreation
   - repair or replacement of existing structures
   - outdoor recreation projects within the 100-year flood plain which have been man-altered by grading and/or filling activities which occurred prior to June 26, 1975.

7. The North Lahontan Basin Plan allows an exception to the prohibitions of Finding No. 5, for the project types listed in Finding No. 6, only when the Regional Board makes all of the following findings:

   - There is no reasonable alternative to locating the project or portions of the project within the 100-year flood plain.
   - The project, by its very nature, must be located within the 100-year flood plain. The determination of whether a project, by its very nature, must be located in a 100-year flood plain shall be based on the type of project proposed, not the particular site proposed.
   - The project incorporates measures which will insure that any erosion and surface runoff problems caused by the project are mitigated to levels of insignificance.
   - The project will not individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.
   - All 100-year flood plain areas and volumes lost as a result of the project will be completely mitigated by restoration of a previously disturbed flood plain within or as close as practical to the project site. The restored, new, or enlarged flood plain shall be of sufficient area and volume to more than compensate for the flood flow attenuation capacity, surface flow treatment capacity, and groundwater flow treatment capacity which are lost as a result of the project.

8. The Lake Tahoe Basin Water Quality Plan (Lake Tahoe Basin Plan), as amended prohibits the following:

   - o discharge from new development in stream environment zones or which is not in accordance with land capability
   - o discharge to stream environment zones

9. The Lake Tahoe Basin Plan states that the prohibitions listed in Finding No. 8 shall not apply to any structure the Regional Board, or a management agency designated by the State Board to implement the Lake Tahoe water quality plan, approves as reasonably necessary;

   - o to control existing sources of erosion or water pollution,
   - o to carry out the 1988 TRPA regional transportation plan,
   - o for health, safety, or public recreation,
   - o for access across SEZ's to otherwise buildable parcels

   Approval of exemptions shall include the findings set forth in Section 20.4 of Tahoe Regional Planning Agency's Code of Ordinances.

10. Both the North Lahontan Basin Plan and the Lake Tahoe Basin Plan use the terms "exception" and "exemption" interchangeably. For the purposes of this Resolution, the term "exception" will be used in all places other than where quoted directly from the Plans.

11. On March 8, 1990, the Regional Board adopted Resolution No. 6-90-22, which delegated authority to the Executive Officer to grant exceptions to the Basin Plan Prohibitions referred to in Findings No. 5 and 8 above. The Resolution delegated this authority for projects that can meet the necessary exception findings and that meet the following size criteria:

    a. less than 500 square feet of coverage, or

    b. less than 1,000 square feet of ground disturbance, or

    c. less than 50 cubic yards of fill or excavation.

12. Since Resolution No. 6-90-22 was adopted, several prohibition exceptions have been granted by the Executive Officer. However, due to the size limitations mentioned above, many projects which would otherwise qualify for a waiver or approval under the General Waste Discharge Requirements are required to obtain an exception from the Regional Board.

13. The Regional Board finds that delegating authority to the Executive Officer to grant the exceptions to the prohibitions when the project meets conditions for a waiver or approval under the General Waste Discharge Requirements and meets the exception criteria in the North Lahontan Basin Plan or Lake Tahoe Basin Plan would enable Regional Board staff to use resources more effectively.

14. The Regional Board finds that delegation of authority to grant exceptions can allow qualifying projects to proceed in a more timely manner.

15. The Regional Board finds that delegating authority to the Executive Officer to grant exceptions to the Basin Plan prohibitions specified in Findings No. 5 and 8 for projects of less than 1,000 square feet of new impervious coverage, and 2,000 square feet of new ground disturbance and 100 cubic yards of fill or excavation would not be against the public interest when the discharge is mitigated as required by the Basin Plans, and will not adversely affect the quality or the beneficial uses of the waters of the State.

16. A Report of Waste Discharge shall be filed for any discharge for which approval is sought pursuant to this Resolution.

17. Discharge from a project cannot commence until such time as the Regional Board Executive Officer has prepared and sent a letter indicating that an exception to the Basin Plan prohibitions is granted and that waste discharge requirements for the project are waived or the General Waste Discharge Requirements are applicable.

18. The Regional Board held a hearing on January 28 and 29, 1993 in Truckee, California and considered all evidence concerning this matter.

THEREFORE BE IT RESOLVED:

1. The Regional Board delegates authority to the Executive Officer to grant exceptions to Basin Plan Prohibitions for the Truckee River Hydrologic Unit and the Lake Tahoe Basin for specific discharges where:

    a. the project qualifies for a waiver of Waste Discharge Requirements or can be covered under General Waste Discharge Requirements, and

    b. the project meets exception criteria of the North Lahontan Basin Plan or the Lake Tahoe Basin Plan, and

    c. the project is less than the following specific size limitations:

1) 1,000 square feet of new impervious coverage, and

2) 2,000 square feet of new ground disturbance, and

3) 100 cubic yards of fill or excavation.

2. Except in emergency situations, the Executive Officer shall notify the Board and interested members of the public of his intent to issue an exception subject to this Resolution at least ten (10) days before the exemption is issued. A notice of the exception will also be published in a local newspaper and interested parties will be allowed at least seven (7) days to submit comments. All comments received and staff's response to the comments will be forwarded to the Board with the proposed exception. Any Regional Board member may direct that an exception not be granted by the Executive Officer and that it be scheduled for consideration by the Regional Board.

3. This action delegating authority to the Executive Officer to grant exceptions is conditional and the Executive Officer may recommend that certain exception requests be considered by the Regional Board.

4. Resolution No. 6-90-22 is hereby rescinded.

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 January 29, 1993.

Harold J. Singer

HAROLD J. SINGER
EXECUTIVE OFFICER

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ENCLOSURE 5

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION 6-00-96

DELEGATING AUTHORITY TO THE EXECUTIVE OFFICER TO GRANT EXEMPTIONS TO BASIN PLAN PROHIBITIONS IN THE EVENT OF AN EMERGENCY OR WHEN THE REGIONAL BOARD LACKS A QUORUM TO ACT ON EXEMPTION REQUESTS

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

1. Water Code Section 13260(a) requires that any person discharging waste or proposing to discharge waste within the Region, other than to a community sewer system, that could affect the quality of the waters of the state, shall file a report of waste discharge.

2. The California Regional Water Quality Control Board, Lahontan Region, has a statutory obligation to prescribe waste discharge requirement for the discharge of any waste that could affect water quality. Waste discharge requirements may be waived when it is not against the public interest pursuant to California Water Code Section 13269.

3. The Regional Board adopted Resolution No. 6-88-18, "Waiver of Waste Discharge Requirements for Specific Types of Discharges" which specifies the types of projects for which the Executive Officer can waive Waste Discharge Requirements.

4. The Water Quality Control Plan for the Lahontan Region (Basin Plan), as amended, contains the following Regionwide Prohibitions:

    a. The discharge of waste which causes violation of any narrative water quality objective contained in this Plan, including the Nondegradation Objective, is prohibited.

    b. The discharge of waste which causes violation of any numeric water quality objective contained in this Plan is prohibited.

    c. Where any numeric or narrative water quality objective contained in this Plan is already being violated, the discharge of waste which causes further degradation or pollution is prohibited.

    d. The discharge of untreated sewage, garbage, or other solid wastes, or industrial wastes into surface waters of the Region is prohibited.

    e. For municipal and industrial discharges:

The discharge, bypass, or diversion of raw or partially treated sewage, sludge, grease, or oils to surface waters is prohibited.

The discharge of wastewater except to the designated disposal site (as designated in waste discharge requirements) is prohibited.

5. The Basin Plan allows the Regional Board to grant exemptions to the prohibitions of Finding No. 4 for waste earthen materials discharged as a result of restoration projects whenever it finds that a specific project meets all of the following criteria:

    a. The project will eliminate, reduce or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water, and

    b. There is no feasible alternative to the project that would comply with provisions of this Basin Plan, precluding the need for an exemption, and

    c. Land disturbance will be limited to the absolute minimum necessary to correct or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water, and

    d. All applicable Best Management Practices and mitigation measures have been incorporated into the project to minimize soil erosion, surface runoff, and other potential adverse environmental impacts, and

    e. The project complies with all applicable laws, regulations, plans, and policies.

6. The Basin Plan prohibits the discharge of waste to surface water, including sewage or sewage effluent in the following locations within the Mono and Owens Hydrologic Units:

    a. Mill Creek and Lee Vining Creek watersheds.

    b. Rush Creek watershed above the outlet from Grant Lake.

    c. The Owens River and its tributaries upstream of Crowley Lake above elevation 7,200 feet.

    d. The Owens River and its tributaries downstream of Crowley Lake above elevation 5,000 feet.

7. The Basin Plan allows the Regional Board to grant an exemption to the prohibitions of Finding No. 6 whenever the Regional Board finds that the discharge of waste to surface waters will not, individually or collectively, directly or indirectly, adversely affect water quality or beneficial uses.

8. The Basin Plan prohibits the discharge of waste in the following portions of Inyo County Service Area No. 1:

    a. Rush Creek watershed above the outlet of Grant Lake.

    b. Mammoth Creek watershed above elevation 7,650 feet, including the drainage area of the community of Mammoth Lakes.

9. The Basin Plan allows the Regional Board to grant an exemption to the prohibition of Finding No. 8 whenever the Regional Board finds that a solid waste disposal site operated in accordance with an approved solid waste disposal plan will not, directly or indirectly, adversely affect water quality or beneficial uses.

10. The Basin Plan prohibits the discharge of waste to surface water above elevation 3,500 feet within the Antelope Hydrologic Unit.

11. The Basin Plan allows the Regional Board to grant an exemption to the prohibition of Finding No. 10 whenever the Regional Board finds that the discharge of waste to surface waters will not, individually or collectively, directly or indirectly, adversely affect water quality or beneficial uses.

12. The Basin Plan prohibits the discharge of waste to surface water in the Mojave Hydrologic Unit that is tributary to the West Fork Mojave River or Deep Creek, above elevation 3,200 feet.

13. The Basin Plan allows the Regional Board to grant an exemption to the prohibition of Finding No. 12 whenever the Regional Board finds that the discharge of waste to surface waters will not, individually or collectively, directly or indirectly, adversely affect water quality or beneficial uses.

14. The Basin Plan prohibits the discharge of waste within the following areas of the Mojave Hydrologic Unit:

    a. The Silverwood Lake watershed.

    b. The Deep Creek watershed above elevation 3,200 feet.

    c. The Grass Valley Creek watershed above elevation 3,200 feet.

15. The Basin Plan allows the Regional Board to grant an exemption to the prohibition of Finding No. 14 whenever the Regional Board finds that a solid waste disposal site operated in accordance with an approved solid waste disposal plan will not, directly or indirectly, adversely affect water quality or beneficial uses.

16. The Basin Plan prohibits the discharge of waste of sewage-bearing origin to surface waters in the Mojave River upstream of the Lower Narrows at Victorville.

17. The Basin Plan allows the Regional Board to grant an exemption to the prohibition of Finding No. 16 whenever the Regional Board finds that the discharge of waste is not directly to surface water, and will not, individually or collectively, directly or indirectly, adversely affect water quality or beneficial uses.

18. The Basin Plan prohibits the discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic and earthen materials to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River.

19. The Basin Plan allows the Regional Board to grant exemptions to the prohibitions of Finding No. 18 for the Truckee River and Little Truckee River Hydrologic Units for the following types of projects:

    a. Projects solely intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas.

    b. Bridge abutments, approaches, or other essential transportation facilities identified in an approved county general plan.

    c. Projects necessary to protect public health or safety or to provide essential public services.

    d. Projects necessary for public recreation.

    e. Projects that will provide outdoor public recreation within portions of the 100-year floodplain that have been substantially altered by grading and/or filling activities which occurred prior to June 26, 1975.

20. The Basin Plan may grant exemptions to the prohibitions of Finding No. 18 for the project types listed in Finding No. 19 only when the Regional Board makes all of the following findings:

    a. There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain.

    b. The project, by its very nature, must be located within the 100-year floodplain.

    c. The project incorporates measures which will insure that any erosion and surface runoff problems caused by the project are mitigated to levels of insignificance.

d. The project will not, individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.

e. The project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions. This shall be ensured by restoration of previously disturbed areas within the 100-year floodplain within the project site, or by enlargement of the floodplain within or as close as practical to the project site. The restored, new or enlarged floodplain shall be of sufficient area, volume, and wetland value more than offset the flood flow attenuation capacity, surface flow treatment capacity and ground water flow treatment capacity lost by construction of the project. This finding will not be required for: (1) essential public health or safety projects, (2) projects to provide essential public services for which the Regional Board finds such mitigation measures to be infeasible because the financial resources of the entity proposing the project are severely limited, or (3) projects for which the Regional Board finds (based on evidence presented by the proposed discharger) that the project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions.

21. The Basin Plan prohibits the following activities within the Lake Tahoe Hydrologic Unit:

    a. The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials to lands below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe.

    b. The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, due to the placement of said materials below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe.

22. The Basin Plan allows the Regional Board to grant exemptions to the prohibitions of Finding No. 21 in cases where the floodplain is not also a Stream Environment Zone, only under the following circumstances:

    a. For public outdoor recreation facilities if: (a) the project is necessary part of a public agency's long range plans for public outdoor recreation; (b) the project, by its very nature, must be sited in a floodplain; (c) there is no feasible alternative which would reduce the extent of encroachment in a floodplain, and (d) the impacts on the floodplain are minimized.

    b. For public service facilities if: (a) the project is necessary for public health, safety, or environmental protection, (b) there is no reasonable alternative,

including spans, which avoids or reduces the extent of encroachment in a floodplain, and (c) the impacts on the floodplain are minimized.

c. For projects which require access across floodplains to otherwise buildable sites if (a) there is no reasonable alternative which avoids or reduces the extent of encroachment in the floodplain and (b) the impacts on the floodplain are minimized; and

d. For erosion control projects, habitat restoration projects, SEZ restoration projects and similar projects provided that the project is necessary for environmental protection and there is no reasonable alternative which avoids or reduces the extent of encroachment in the floodplain.

23. The Basin Plan prohibits the following activities within the Lake Tahoe Hydrologic Unit:

a. The discharge or threatened discharge, attributable to development of any new subdivision, of solid or liquid waste, including soil, silt, sand, clay, or other organic or earthen material, to ground or surface waters in the Lake Tahoe Basin.

b. The discharge or threatened discharge, attributable to new development in Stream Environment Zones or which is not in accordance with land capability, or solid or liquid waste, including soil, silt, sand, clay, or other organic or earthen material, to ground or surface waters in the Lake Tahoe Basin.

c. The discharge or threatened discharge, attributable to new development in Stream Environment Zones, of solid or liquid waste, including soil, silt, sand, clay, rock, metal, plastic, or other organic, mineral or earthen material, to Stream Environment Zones in the Lake Tahoe Basin.

d. The discharge or threatened discharge attributable to new development not in accordance to new development not in accordance with the offset policy set by the *Lake Tahoe Basin Water Quality Plan* and/or the offset requirements summarized in the section entitled "Remedial Programs and Offset" of solid or liquid waste, including soil, silt, sand, clay or other organic or earthen material, to ground or surface waters in the Lake Tahoe Basin.

24. The Basin Plan states the prohibitions listed in Finding No. 23 shall not apply to any structure the Regional Board approves as reasonably necessary:

a. for erosion control projects, habitat restoration projects, wetland rehabilitation projects, Stream Environment Zone restoration projects, and similar projects, programs, and facilities,

b. to carry out the 1988 TRPA regional transportation plan,

c. for health, safety, or public recreation, or

d. for access across SEZs to otherwise buildable parcels.

25. On January 29, 1993, the Regional Board adopted Resolution No. 6-93-08, which delegated authority to the Executive Officer to grant exemptions to the Basin Plan Prohibitions referred to in Findings No. 18, 21 and 23 above. The Resolution delegated this authority for projects that can meet the following criteria:

    a. The project qualifies for a waiver of Waste Discharge Requirements or can be covered under General Waste Discharge Requirements, and

    b. The project meets exception criteria of the Water Quality Control Plan for the Lahontan Region, and

    c. The project is less than the following specific size limitations:

        1. 1,000 square feet of new impervious coverage, and
        2. 2,000 square feet of new ground disturbance, and
        3. 100 cubic yards of fill or excavation.

26. On July 12, 2000, the Regional Board amended the size criteria allowing the Executive Officer to grant exemptions for any size project when the primary purpose is for water quality improvement.

27. The Regional Board finds that delegating authority to the Executive Officer to grant exemptions to prohibitions when the project meets conditions for a waiver or approval under the General Waste Discharge Requirements and meets the exception criteria in the Basin Plan has enabled Regional Board staff to use resources more effectively.

28. The Regional Board finds that in emergencies projects may require Basin Plan prohibition exemptions normally requiring Regional Board approval. An emergency is defined as a sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services (Section 21083 and 21087, Public Resources Code).

29. The Regional Board must have a quorum of at least five members to consider exemption requests.

30. The Regional Board finds that delegating authority to the Executive Officer to grant exemptions to the Basin Plan Prohibitions referred to in Findings No. 4, 6, 8, 10, 12, 14, 16, 18, 21, and 23 would not be against the public interest in the case of emergency or when the Regional Board lacks a quorum to act on exemption requests.

31. A Report of Waste Discharge shall be filed for any discharge for which approval is sought pursuant to this Resolution.

32. Discharge from a project cannot commence until such time as the Regional Board Executive Officer has prepared and sent a letter indicating that an exception to the Basin Plan Prohibitions is granted and that Waste Discharge Requirements for the project are waived or that General Waste Discharge Requirements are applicable.

33. The Regional Board held a hearing on November 15 and 16, 2000 in Ridgecrest, California and considered all evidence concerning this matter.

THEREFORE BE IT RESOLVED:

1. The Regional Board delegates authority to the Executive Officer to grant exemptions to Basin Plan prohibitions otherwise reserved for Regional Board review in the following circumstances:

    a. An emergency situation where time constraints do not allow for Regional Board consideration; or

    b. When the Regional Board lacks a quorum to act on Basin Plan prohibition exemption requests.

2. Except in emergencies, the Executive Officer shall notify the Board and interested members of the public of his intent to issue an exemption subject to this Resolution at least ten (10) days before the exemption is issued. A notice of the exemption will also be published in a local newspaper and interested parties will be allowed at least seven (7) days to submit comments. All comments received and staff responses to the comments will be forwarded to the Board with the proposed exemption. Any Regional Board member may direct that an exemption not be granted by the Executive Officer and that it be scheduled for consideration by the Regional Board.

3. This action delegating authority to the Executive Officer to grant Basin Plan prohibition exemptions is conditional and the Executive Officer may recommend that certain exemption requests be considered by the Regional Board.

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 November 15, 2000.

Harold J. Singer

HAROLD J. SINGER
EXECUTIVE OFFICER

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ENCLOSURE 6

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2008- 0031

CLARIFYING AND EXPANDING PRIOR DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER TO GRANT EXEMPTIONS AND EXCEPTIONS TO BASIN PLAN PROHIBITIONS

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

1. Water Code section 13223 states that each regional board may delegate any of its powers and duties vested in the regional board to its executive officer excepting only the following: (1) the promulgation of any regulation; (2) the issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement; (3) the issuance, modification, or revocation of any cease and desist order; (4) the holding of any hearing on water quality control plans; and (5) the application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding cases described in subdivision (c) of Section 13002 and Sections 13304 and 13340 of the Water Code.

2. The Water Board, in Resolution No. 6-90-72, has previously delegated to its executive officer all powers and duties except for the five listed in Finding No. 1 above and a few additional powers and duties, none of which related to granting exemptions or exceptions to Basin Plan prohibitions.

3. The Water Quality Control Plan for the Lahontan Region (Basin Plan) contains a number of prohibitions of discharge of waste. In addition, the Basin Plan includes criteria for the granting of exemptions and exceptions to many of these prohibitions. Historically, the Water Board has been operating under the premise that, not withstanding the delegation in Resolution No. 6-90-72, its executive officer could only grant exemptions or exceptions when the Water Board specifically delegated that authority. Under this premise, the Water Board delegated authority to its executive officer to grant exemptions and exceptions under some of the criteria specified in the Basin Plan.

4. Consistent with Water Code section 13223 and prior delegation resolutions of the Water Board (e.g. Resolution No. 6-90-72), a more appropriate interpretation of the Water Board's prior delegation of powers and duties to its executive officer includes the authority to grant any exemption or exception provided for in the Basin Plan. This interpretation is more appropriate because such authority was not specifically withheld either in a prior Water Board resolution or in the Basin Plan. Therefore, under this interpretation, it is not necessary for the Water Board to make any further delegation. Rather, if the Water Board chose to retain the sole authority to grant specific exemptions or exceptions, it would need to modify its delegation.

5. The Water Board's delegation as noted in Finding No. 1 and its duplicative delegation of authority to grant limited Basin Plan exemptions or exceptions as noted in Finding No. 3 may create uncertainty as to the precise intent of the Water Board.

6. The Water Board intends to review all of the exemptions and exceptions provided for in the Basin Plan to determine if it may choose to retain authority to grant certain exemptions or exceptions. However, until it conducts this review, the Water Board, in this Resolution, is clarifying its prior intent to delegate to its executive officer the ability to grant exemptions or exceptions to prohibitions in the Basin Plan.

7. Water Code section 13260, subdivision (a) requires that any person discharging waste or proposing to discharge waste within the Region, other than to a community sewer system, that could affect the quality of the waters of the state, shall file a report of waste discharge.

8. The Water Board has a statutory obligation to prescribe waste discharge requirements for the discharge of any waste that could affect water quality except that waste discharge requirements may be waived when it is consistent with any applicable state or regional water quality control plan and is in the public interest pursuant to Water Code section 13269.

9. Many projects that would qualify for an exemption or exception would normally be permitted under an existing general permit, waiver of waste discharge requirements or water quality certification order.

10. The Water Board finds that delegating authority to the executive officer to grant the exemptions or exceptions to the prohibitions in the Basin Plan when the project can be otherwise authorized by the executive officer (e.g. general permit, general waiver, or water quality certification order) would enable Water Board staff to use resources more effectively.

11. The Water Board finds that delegation of authority to grant exemptions or exceptions can allow qualifying projects to proceed in a more timely manner.

12. The Water Board finds that delegating authority to the executive officer to grant exemptions to the Basin Plan prohibitions specified in the Attachment to this Resolution would not be against the public interest when the discharge is mitigated as required by the Basin Plan, and will not adversely affect the quality or the beneficial uses of the waters of the State.

13. A Report of Waste Discharge or project description shall be filed for any discharge for which approval is sought pursuant to this Resolution.

14. Discharge from a project cannot commence until such time as the Water Board executive officer has prepared and sent a letter to the applicant indicating that an

exemption or exception to the Basin Plan prohibitions is granted and that either (1) General Waste Discharge Requirements, a General NPDES permit, or general waiver of waste discharge requirements are applicable, or (2) a Water Quality Certification order is granted.

15. The authority of the Water Board to delegate to its executive officer to grant exemptions or exceptions to Basin Plan prohibitions is consistent with the delegation authority provided by the Water Board to its executive officer pursuant to Water Code section 13223.

THEREFORE BE IT RESOLVED:

1. The Water Board withdraws its delegation of authority to its executive officer to grant exemptions or exceptions to Basin Plan Prohibitions other than as specifically granted in prior resolutions of the Water Board or as specifically listed in the Basin Plan.

2. The Water Board delegates authority to its executive officer to grant exemptions to the Basin Plan prohibitions listed in Attachment 1 for the Lake Tahoe, Truckee River or Little Truckee River Hydrologic Units and for specific discharges where:

   a. The executive officer has the authority to authorize the project under an existing general permit, general waiver or under individual water quality certification order, excluding projects that require a Board action; and
   b. The project meets the exemption or exception criteria set forth in the Basin Plan; and
   c. The project is necessary for public health, safety, or environmental protection; or
   d. The project's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution; or
   e. The project is a repair or replacement of existing facilities; or
   f. The project is a bridge abutment, approach or an essential transportation facility; or
   g. The public recreation project is within the following specific size limitations:
      - less than 2000 square feet of new ground disturbance, and
      - less than 100 cubic yards of fill or excavation.

3. Except in emergency situations, the executive officer shall notify the Board and interested members of the public of his intent to issue an exemption or exception subject to this Resolution at least ten (10) days before the exemption or exception is issued. A notice of exemption will also be posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments. Any Water Board member may direct that an exemption not be granted by the executive officer and that it be scheduled for consideration by the Water Board. Additionally, in response to public comment or for any other reason, the executive officer may chose to bring the issuance of the exemption or exception to the Water Board for its consideration.

4. A Report of Waste Discharge or project description shall be filed for any discharge for which approval is sought from the executive officer. Discharge from a project cannot commence until such time as the Water Board executive officer has prepared and sent a letter to the applicant indicating that an exemption to the Basin Plan prohibition is granted and that either (1) waste discharge requirements for the project are waived, (2) General Waste Discharge Requirements or General NPDES permits are applicable, or (3) Water Quality Certification order is granted. The Water Board's action delegating authority to the executive officer to grant an exemption or exception is conditional and the executive officer may recommend that certain exemption requests be considered by the Water Board.

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 24, 2008.

Harold J. Singer

HAROLD J. SINGER
EXECUTIVE OFFICER

Attachment 1: Excerpts from the Basin Plan

Attachment No. 1
EXCERPTS FROM THE BASIN PLAN

Chapter 4, Section 4.1 and Chapter 5, Section 5.2

Discharge Prohibitions for the Truckee River and Little Truckee River or any tributary to the Truckee River or Little Truckee River:

Section 4.1 - 4: Little Truckee River

4. (c). The discharge or threatened discharge attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to lands within the 100-year floodplain of the Little Truckee River or any tributary to the Little Truckee River.

Section 4.1 -6: Truckee River

4. (c). The discharge or threatened discharge attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River.

Section 5.2 – 6: Truckee River (between the Lake Tahoe Dam and the confluence of the Truckee River with Bear Creek)

10. The discharge or threatened discharge attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River.

The Basin Plan allows an exemption to the above three prohibitions for:

> ... repair or replacement of existing structures, provided that the repair or replacement does not involve the loss of additional floodplain area or volume.

The Basin Plan also allows an exemption to the three prohibitions cited above for the Lake Tahoe (where the land is not also a Stream Environment Zone), Truckee River and Little Truckee River Hydrologic Units for only the following categories of new projects:

(1) Projects solely intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas

(2) Bridge abutments, approaches, or other essential transportation facilities identified in an approved general county plan

(3) Projects necessary to protect public health or safety or to provide essential public services

(4) Projects necessary for public recreation

(5) Projects that will provide outdoor public recreation within portions of the 100-year floodplain that have been substantially altered by grading and/or filling activities which occurred prior to June 26, 1975.

The Basin Plan allows an exemption to the three prohibitions listed above only when the Water Board makes all of the following findings:

- The project is included in one or more of the five categories listed above

- There is no reasonable alternative to locating the project or portions of the projects within the 100-year floodplain

- The project, by its very nature, must be located within the 100-year floodplain. The determination of whether a project, by its very nature, must be located in a 100-year floodplain shall be based on the type of project proposed, not the particular site proposed. Exemptions for projects such as recreational facility parking lots and visitor centers, which by their very nature do not have to be located in a 100-year floodplain, will not be allowed in areas that were not substantially altered by grading and/or filling prior to June 26, 1975.

- The project incorporates measures which will insure that any erosion and surface runoff problems caused by the project are mitigated to levels of insignificance.

- The project will not, individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.

- The project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions. This shall be ensured by restoration of previously disturbed areas within the 100-year floodplain within the project site, or by enlargement of the floodplain within or as close as practical to the project site. The restored, new or enlarged floodplain shall be of sufficient area, volume, and wetland value more than offset the flood flow attenuation capacity, surface flow treatment capacity and ground water flow treatment capacity lost by construction of the project. This finding will not be required for: (1) essential public health or safety projects, (2) projects to provide essential public services for which the Regional Board finds such mitigation measures to be infeasible because the financial resources of the entity proposing the project are severely limited, or (3) projects for which the Regional Board finds (based on evidence presented by the proposed discharger) that the project will not reduce the flood flow attenuation capacity, the surface

flow treatment capacity, or the ground water flow treatment capacity from existing conditions.

Chapter 5, Section 5.2

Section 5.2 – 4: Discharge Prohibitions for the Lake Tahoe Hydrologic Unit

12. The discharge or threatened discharge, attributable to new development in Stream Environment Zones or which is not in accordance with land capability, of solid or liquid waste, including soil, silt, sand, clay, or other organic or earthen materials, to ground or surface waters in the Lake Tahoe Basin is prohibited.

13. The discharge or threatened discharge, attributable to new development in Stream Environment Zones, of solid or liquid waste, including soil, silt, sand, clay, rock, metal, plastic, or other organic or earthen materials, to Stream Environment Zones in the Lake Tahoe Basin is prohibited.

The Basin Plan allows an exemption to Prohibitions 12 and 13 and states that these prohibitions shall not apply to any structure the Water Board approves as reasonably necessary;

- for erosion control projects, habitat restoration projects, wetland rehabilitation projects, SEZ restoration projects, and similar projects, programs, and facilities,
- to carry out the 1988 TRPA regional transportation plan,
- for health, safety, or public recreation,
- for access across SEZs to otherwise buildable parcels

The Water Board may grant exemptions from the discharge prohibitions 12 and 13 (listed above) for new development in excess of the land capability system limits on Class 1a, 1c, 2 or 3 lands only under the following circumstances:

- For public outdoor recreation facilities, when all of the following findings can be made:
  (a) The project, by its very nature, must be sited in Land Capability Districts 1a, 1c, 2 or 3, such as a ski run or hiking trail.
  (b) There is no feasible alternative which avoids or reduces the extent of excess coverage in Land Capability Districts 1a, 1c, 2, or 3, and
  (c) The impacts of the new development are fully mitigated through means including, but not limited to, application of BMPs and restoration of land in Land Capability Districts 1a, 1c, 2, and 3 in the amount of 1.5 times the area of land in such districts disturbed beyond the limits of the land capability system.

- For public service facilities, when all of the following findings can be made:

(a) The project is necessary for public health, safety, or environmental protection,
(b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of excess coverage in land capability Districts 1a, 1c, 2 and 3, and
(c) The impacts of new development are fully mitigated through means including, but not limited to, application of BMPs and restoration of land in land capability Districts 1a, 1c, 2, and 3.

- For erosion control projects, habitat restoration projects, wetland rehabilitation projects, Stream Environment Zone restoration projects, and similar projects, programs and facilities, when all of the following findings can be made:
  (a) The project, program or facility is necessary for environmental protection, and
  (b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in land capability Districts 1a, 1c, 2, and 3.

The Water Board shall grant exemptions to the prohibitions 12 and 13 (as listed above) against discharges or threatened discharges attributable to new development or permanent disturbance in SEZs only under the following circumstances:

- For public outdoor recreation facilities if all of the following findings can be made:
  (a) The project by its nature must be sited in a Stream Environment Zone (in making this determination the Regional Board should use the criteria in Table 5.7-3);
  (b) There is no feasible alternative which would reduce the extent of SEZ encroachment;
  (c) Impacts are fully mitigated; and
  (d) SEZs are restored in an amount 1.5 times the area of SEZ disturbed or developed for the project.

- For public service facilities if all of the following findings can be made:
  (a) The project is necessary for public health, safety or environmental protection;
  (b) There is no reasonable alternative, including spans, which avoids or reduces the extent of encroachment;
  (c) The impacts are fully mitigated; and
  (d) SEZ lands are restored in an amount 1.5 times the area of SEZ developed or disturbed by the project.

- For projects which require access across SEZs to otherwise buildable sites if all of the following findings can be made:
  (a) There is no reasonable alternative which avoids or reduces the extent of encroachment;
  (b) Impacts are fully mitigated; and

(c) SEZ lands are restored in an amount 1.5 times the area of SEZ disturbed or developed by the project.

- For new development in man-modified SEZs after the Regional Board has reclassified them according to the procedure described in the section of this Chapter on land capability.

- For erosion control projects, habitat restoration projects, wetland rehabilitation projects, Stream Environment Zone restoration projects, and similar projects, programs, and facilities, if all of the following findings can be made:
  (a) The project, program, or facility is necessary for environmental protection;
  (b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in the Stream Environment Zone; and
  (c) Impacts are fully mitigated.

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ENCLOSURE 7

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2010-0034

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 13268, 13308, 13328, 13350, 3385 and 13399.33. 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 13268, 13308, 13328, 13350, 13385, and 12299.33 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. The Executive Officer is directed to discuss with the Water Board Chair the need for a hearing, prior to issuance of an order, if comments are received on the proposed action.

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.

Harold J. Singer

HAROLD J. SINGER
EXECUTIVE OFFICER

ENCLOSURE 8

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Delegating Water Board Authority to the Executive Officer

June 9, 2015
Item 6

Robert Larsen
Senior Environmental Scientist

Background

- CWC Section 13223 – Allows delegated authority, except to:
  - Promulgate regulations
  - Issue, modify, or revoke:
    - Basin Plan, WQO, WDR, CDO
  - Hold Basin Plan hearings
  - Recommend AG enforcement

Existing Resolutions

- 6-90-72 – Broad delegation, consistent with CWC 13223
- 6-91-938 – Delegates authority to accept preliminary closure plans that meet standards
- 6-93-08 – Delegates authority to issue prohibition exemptions (Tahoe and Truckee)

Existing Resolutions

- 6-00-96 – Delegates authority to issue prohibition exemption in emergencies or lack of quorum
- R6T-2008-0031 – Clarifies and limits when the EO can issue prohibition exemption
- R6T-2010-0034 – Delegates the authority to issue ACLs when no hearing is required

Need for Action

- Delegation resolutions are dated and conflict with current policy
  - 2014 Basin Plan Amendments streamlined Tahoe and Truckee prohibitions and exemption criteria
- Multiple resolutions add confusion regarding delegated authority

Delegated Authority Options

1. A “combined” resolution integrating 6 previous resolutions with updated references and needed corrections
2. A simple resolution consistent with other Regions, without specific policy details
3. A “blend” of items 1. and 2. above that includes information regarding selected policies and Board direction to the EO

Water Board Member Feedback

1. Draft a streamlined resolution consistent with other Regions.
2. Eliminate policy references in the delegation resolution
3. Avoid subjective criteria for when to bring items to a Water Board public meeting

Delegated Authority Direction

1. A “combined” resolution integrating 6 previous resolutions with updated references and needed corrections
2. **A simple resolution consistent with other Regions, without specific policy details**
3. A “blend” of items 1. and 2. above that includes information regarding selected policies and Board direction to the EO

Delegated Authority
Proposed Resolution

1. Streamlined
2. Notification remains consistent with current practices
3. Outdated resolutions rescinded

Recommendation

Adopt the Delegation of Authority resolution as proposed

Questions?