

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION
MEETING OF MAY 11-12, 2016
SOUTH LAKE TAHOE**

ITEM 8

**RENEWED WAIVER OF FILING A REPORT OF WASTE DISCHARGE AND
WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR SPECIFIC TYPES OF
PROJECTS OR DISCHARGES REGULATED BY THE TAHOE REGIONAL
PLANNING AGENCY**

CHRONOLOGY

June 1994	The Water Board entered into a Memorandum of Understanding (MOU) with the Tahoe Regional Planning Agency (TRPA) to reduce regulatory overlap and recognize TRPA regulatory programs as accomplishing Water Board goals for specific activities and project types. The MOU identified which agency would have primary permitting authority for various activities to avoid unnecessary redundancy.
March 2003	The Water Board adopted Resolution R6T-2003-0012 waiving the filing of a report of waste discharge and waste discharge requirements for specific activities and project types regulated by the TRPA. The Resolution also clarified actions and project types that <u>are not</u> subject to the waiver and authorized the Water Board Executive Officer to enter into a revised MOU with TRPA to specify regulatory roles and responsibilities.
August 2003	The Water Board Executive Officer signed an updated MOU (attached) consistent with the direction provided in Resolution R6T-2003-0012.

BACKGROUND

The 2003 waiver and the associated MOU eliminated regulatory redundancy and clarified agency oversight responsibility. By identifying specific project types and defining agency roles, the waiver and MOU enable Water Board and TRPA staff to more effectively use limited agency resources.

Waivers expire five years after adoption and thus the March 2003 waiver is overdue for renewal.

ISSUES

Should the Water Board renew the waiver for specific project types in the Lake Tahoe Hydrologic Unit?

DISCUSSION

Water Board staff evaluated the 2003 MOU to determine whether update was needed. The existing MOU continues to serve both agencies and provides important and consistent guidance regarding regulatory responsibility. Water Board and TRPA staff did not identify any issues that warranted an MOU update.

Given the current MOU continues to satisfactorily serve both agencies, staff drafted a proposed Resolution to renew the waiver and maintain the existing MOU.

PUBLIC OUTREACH/INPUT

The Proposed Resolution and summary sheet were distributed to interested stakeholders via the Water Board's email list system. Staff responded to one inquiry asking clarification regarding the type of activities being waived.

RECOMMENDATION

Adopt the Resolution as proposed.

ENCLOSURE	ITEM	BATES NUMBER
1	Proposed Resolution	8-5
2	2003 MOU between the Water Board and TRPA	8-11

ENCLOSURE 1

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2016-(**PROPOSED**)

RENEWED WAIVER OF FILING A REPORT OF WASTE DISCHARGE AND WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS OR DISCHARGES REGULATED BY THE TAHOE REGIONAL PLANNING AGENCY

WHEREAS, California Water Code Section 13260(a) requires 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 file a report of waste discharge; and

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region (Water Board) has a statutory obligation to prescribe waste discharge requirements, except where a waiver is consistent with the applicable Water Quality Control Plan (Basin Plan) and is in the public interest, pursuant to California Water Code Section 13269; and

WHEREAS, California Water Code Section 13269 stipulates that any waiver of filing a report of waste discharge and/or prescribing waste discharge requirements shall be conditional and may be terminated at any time by the Water Board; and

WHEREAS, the Tahoe Regional Planning Agency (TRPA) is required by the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal. Govt. Code 66801; NRS 277.200) to regulate activities within the Lake Tahoe Basin that may have a substantial effect on natural resources of the Basin, including water quality; and

WHEREAS, the Water Board finds that waiving the filing of a report of waste discharge and waste discharge requirements for constructing new facilities and modifying and/or expanding existing facilities in the Lake Tahoe Hydrologic Area (HU 634.00) of the Lahontan Region would be consistent with the Basin Plan and in the public interest, provided the project or discharge is effectively regulated by the TRPA and does **not** involve:

1. Total land disturbance of one (1) acre or more,
2. More than 1,000 square feet of new disturbance or 100 cubic yards of fill in lands classified as stream environment zones (SEZs),
3. Best management practice (BMP) retrofit of ski areas,
4. Properties for which waste discharge requirements have previously been adopted,
5. Dredging, or
6. Public erosion control/runoff treatment; and

WHEREAS, the Water Board finds that waiving the filing of a report of waste discharge and waste discharge requirements for the following categories of projects and activities within the Lake Tahoe Hydrologic Area (HU 634.00) of the Lahontan Region would be consistent with the Basin Plan and in the public interest when the project or discharge is effectively regulated by the TRPA, provided the applicant obtains 401 Water Quality Certification from the Water Board for those projects requiring an Army Corps of Engineers Section 404 Permit:

1. Piers,
2. Boat ramps,
3. Buoys,
4. Floating docks and platforms, and
5. Shorezone protection structures; and

WHEREAS, the Water Board finds that waiving the filing of a report of waste discharge and/or waste discharge requirements for the categories of projects listed above would enable Water Board staff to use its resources effectively and to reduce duplicative regulatory requirements; and

WHEREAS, the Water Board adopted a negative declaration on March 12, 2003 in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and State guidelines that determined there will be no significant adverse impacts to the environment from the waiver of filing a report of waste discharge and/or waste discharge requirements for the categories of projects specified herein that are regulated by the TRPA; and

WHEREAS, the Water Board Executive Officer signed a Memorandum of Understanding (MOU) with the TRPA on August 5, 2003 that identifies lead agency regulatory responsibility for specific project types in the Lake Tahoe region, consistent with this Resolution, and describes projects that will be overseen by both agencies. The 2003 MOU enhances both Water Board and TRPA efficiency by reducing regulatory redundancy while maintaining water quality protection; and

WHEREAS, the Water Board held a hearing on May 11 and 12, 2016 in South Lake Tahoe, El Dorado County and considered all evidence concerning this matter.

THEREFORE BE IT RESOLVED, the Water Board waives the filing of a report of waste discharge and/or waste discharge requirements for the projects and discharges as specified above; and

BE IT FURTHER RESOLVED, the Water Board does **not** waive the filing of a report of waste discharge and waste discharge requirements for projects and activities where, in the opinion of the Executive Officer, waste discharge requirements are necessary or that involve any of the following:

1. Over one acre of total land disturbance, or
2. More than 1,000 square feet of new disturbance or 100 cubic yards of fill in lands classified as SEZs,
3. Wetland restoration, or
4. Properties for which waste discharge requirements have previously been adopted, or
5. Dredging; and

BE IT FURTHER RESOLVED, any project requiring Water Quality Certification under Section 401 of the Clean Water Act must obtain that certification from the Water Board prior to discharging; and

BE IT FURTHER RESOLVED, this action waiving the filing of a report of waste discharge and waste discharge requirements is conditional and the Executive Officer can recommend the Water Board adopt waste discharge requirements for any of the specific types of projects or discharges, or any individual project or discharge.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on May 11, 2016.

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

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ENCLOSURE 2

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MEMORANDUM OF UNDERSTANDING BETWEEN THE
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN REGION, AND
THE TAHOE REGIONAL PLANNING AGENCY

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region (Lahontan RWQCB), through direction to the RWQCB Executive Officer, and the Tahoe Regional Planning Agency (TRPA) Governing Body, through direction to the TRPA Executive Director, have agreed to enter into this Memorandum of Understanding (MOU); and

WHEREAS, Lake Tahoe is a designated Outstanding National Resource Water whose quality and beneficial uses are threatened by sediment, nutrient, and other pollutant loading from a variety of sources. Control of these sources is of major interest to the States of California and Nevada and the federal government; and

WHEREAS, the Lahontan RWQCB is an agency of the State of California, empowered by the federal Clean Water Act, the Porter-Cologne Water Quality Control Act, and other federal and state laws to set water quality standards and to regulate activities in the California portion of the Lake Tahoe Basin which may have an adverse effect on water quality; and

WHEREAS, the Lahontan RWQCB is responsible for implementing the federal Clean Water Act NPDES and 401 Water Quality Certification Programs, and is a responsible agency under the California Environmental Quality Act (CEQA); and

WHEREAS, TRPA is required by the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal. Govt. Code 66801; NRS 277.200) to regulate activities within the Lake Tahoe Basin, which may have a substantial effect on natural resources of the Basin. To protect these resources, the Compact directs TRPA to establish and ensure attainment of environmental standards for water quality, air quality, noise, recreation, soil conservation, wildlife habitat, vegetation preservation, scenic quality, and fisheries. The Compact also directs TRPA to define which activities are exempt from TRPA review and approval. TRPA defines exempt activities in Chapter 4 of its Code of Ordinances; and

WHEREAS, the Lahontan RWQCB and TRPA are both responsible for implementing the bi-state Water Quality Management Plan for the Lake Tahoe Region ("208 Plan") and TRPA is recognized as one of the implementing agencies for certain California Water Quality Control Plan provisions applicable to the Lake Tahoe Basin. These provisions require compliance with water quality standards and the installation of BMPs for the control of erosion and storm water on all improved properties in the California portion of the Lake Tahoe Basin, and prohibit disturbance of Stream Environment Zones (SEZs), with limited exceptions; and

WHEREAS, the Lahontan RWQCB and TRPA are interested in developing a cooperative approach toward implementation of water quality plan provisions related to prevention of water pollution; control of erosion, sediment, storm water, and wastewater; and cleanup activities for ground water contamination; and

WHEREAS, the Lahontan RWQCB and TRPA recognize that areas of overlapping authority and regulatory effort exist in the operations of the two agencies, and that it will be mutually beneficial to the RWQCB, TRPA, and the regulated community to avoid unnecessary duplicative regulation.

WHEREAS, the Lahontan RWQCB has found that waiving filing a report of waste discharge and/or waste discharge requirements (WDRs) for discharges associated with Best Management Practices (BMP) retrofit projects and other construction activity defined below, involving less than one acre of total land disturbance and less than 1,000 square feet of new disturbance in lands classified as SEZ, would not be against the public interest when the project or discharge is effectively regulated by TRPA.

NOW THEREFORE, the Lahontan RWQCB and TRPA agree as follows:

1. The Lahontan RWQCB and TRPA will both be responsible for the following categories of projects and activities:
 - a. **Projects Over One Acre Total Land Disturbance***: Review, permitting, and enforcement for any project, regardless of the category of use, involving more than one (1) acre of land disturbance.
 - * **Total Land Disturbance refers to any and all temporary and permanent land disturbance associated with a project, including access roads, staging areas, building foundations, BMPs, and landscaping.**
 - b. **Ski Areas**: Review, permitting, and enforcement to ensure BMP retrofit of existing ski areas.
 - c. **Public Erosion Control/Runoff Treatment Projects**: Review, permitting, and enforcement to ensure BMP retrofit of public right-of-ways. (Public right-of-ways include the City of South Lake Tahoe, El Dorado County, Placer County, and Caltrans roadways.) These projects may include treatment of storm water generated on private land.
 - d. **New Disturbance in an SEZ**: Review, permitting, and enforcement for facilities/projects involving more than 1,000 square feet of new disturbance or 100 cubic yards of fill in an SEZ.
 - e. **Stream Restoration and Wetland Restoration Projects**: Review, permitting, and enforcement for stream restoration and wetland restoration projects involving more than 1,000 square feet of disturbance or 100 cubic yards of fill in SEZ lands.
 - f. **New Dredging**: Review, permitting, and enforcement for new dredging.
2. Each agency will assume either primary or secondary responsibility, within the confines of each agency's authority, for the types of projects and activities listed in Paragraphs 3 and 4, below. The agency with primary responsibility will review project proposals, issue permits, conduct inspections, and take enforcement action as necessary to ensure compliance with permits. The other agency will not normally issue a permit, but may

consult with staff of the primary agency as provided below in Paragraph 10, and may also use its full regulatory authority when necessary as described below in Paragraph 9.

3. The Lahontan RWQCB will have primary responsibility for the following categories of projects or activities in the California portion of the Lake Tahoe Basin:
 - a. **Activities Regulated Under Existing Waste Discharge Requirements (WDRs)/NPDES Permits:** Ensure compliance with requirements contained in permits adopted by the Regional Board or State Water Resources Control Board for BMP retrofit, maintenance activities (Caltrans, utility districts, and municipalities), and industrial operations.
 - b. **Marinas - Industrial Activities and Maintenance Dredging:** Ensure compliance with the Lake Tahoe NPDES Storm Water General Permit for Industrial Activities and Maintenance Dredging at Marinas. This applies only to discharges of storm water from the facility or non-storm water discharges associated with the industrial operations of the facilities. Construction of new facilities, facility expansion/modification projects, and changes in use are also subject to review and approval by TRPA.
 - e. **Contaminated Ground Water Sites:** Site assessment, investigation, and review of BMPs and ground water cleanup levels, in cooperation with the appropriate County for specification of soil cleanup levels, for leaking underground storage tank (UST) sites, above-ground tank (AGT) sites, and other spill/leak/investigation/cleanup (SLIC) sites. (SLIC sites include spills of sewage, fuel, oil, paints, pesticides, detergents, etc.) The Regional Board is responsible for reviewing and authorizing any grading associated with cleanup/remediation activities and temporary/permanent BMP plans for the site, and review of any proposed temporary remediation equipment housing for conformance with TRPA's Code of Ordinances. All proposals for temporary structures not conforming to TRPA guidelines shall be referred to TRPA for review, permitting, and enforcement.
4. TRPA will have primary responsibility for the following types of projects or activities in the California portion of the Lake Tahoe Basin:
 - a. **BMPs:** Review, permitting, and enforcement to ensure BMP retrofit on private properties with existing improvements and for which the Lahontan RWQCB has not adopted WDRs.
 - b. **New/Modification/Expansion:** Unless covered in paragraphs 1 or 3 above, review, permitting, and enforcement for the construction of new facilities, modification and/or expansion of existing facilities, and changes in use, provided the project does not exceed one (1) acre of total land disturbance and involve more than 1,000 square feet of new disturbance or 100 cubic yards of fill in an SEZ. This applies to any category of use as defined by TRPA, including residential.

- c. **Shorezone/Lakezone:** Review, permitting, and enforcement for piers, boat ramps, buoys, floating docks and platforms, and shorezone protection provided 401 Water Quality Certification (pursuant to Section 401 of the Clean Water Act) is obtained from the Lahontan RWQCB for those projects requiring an Army Corps of Engineers Section 404 Permit. This applies to all lakes within the Lake Tahoe Basin.
 - d. **Land Capability and Land Coverage:** Verification of land capability districts, in accordance with the Bailey Land Capability Classification System, and verification and tracking of existing, banked, transferred, and mitigated land coverage.
 - e. **Man-modified Determinations:** Review and approval of man-modified determinations to reclassify land capability and shorezone tolerance districts. This includes man-modified determinations for backshore boundary delineations.
5. Private property owners proposing to retrofit their properties with BMPs may elect to obtain approval for their project from the Regional Board instead of TRPA, provided the project does not involve any remodel or expansion of the existing facilities.
 6. Only the agency issuing a permit will be responsible for approval of exemptions to prohibitions related to SEZ disturbance. Any exemptions shall be in accordance with the TRPA Code of Ordinances or the Water Quality Control Plan for the Lahontan Region (Basin Plan).
 7. The agency issuing a permit will conduct any required pre-grade and final inspections, and will be responsible for granting a variance to the October 15 – May 1 soil disturbance prohibition period.
 8. This MOU does not affect projects or activities within the mutual jurisdiction of the Lahontan RWQCB and TRPA in the Truckee River watershed downstream of Lake Tahoe.
 9. Nothing in this MOU shall be construed to limit the authority of either the Lahontan RWQCB or TRPA to ensure compliance with its environmental standards and regulations or to take enforcement action.
 10. Staff of the Lahontan RWQCB and TRPA shall cooperatively provide training, technical review, and comments to each other, as appropriate.
 11. A staff person from each agency shall be designated as a liaison and responsible person for the implementation of this MOU.
 12. Staff of each agency shall meet and coordinate on implementation of the MOU as follows:
 - a. Proposed shorezone projects, including maintenance dredging, shall be discussed at the Shorezone Review Committee.

- b. TRPA staff shall provide training to Regional Board staff for reviewing proposed temporary structures at ground water remediation sites for conformance with the TRPA Code of Ordinances. Regional Board staff shall consult with TRPA staff as needed in reviewing proposals for temporary structures.
 - c. TRPA and Lahontan staff shall meet semi-annually to discuss issues, problems, and opportunities encountered during administration and implementation of this MOU. TRPA and Lahontan staff shall provide a mutual report to the TRPA Executive Director and the Regional Board Executive Officer within 60 days following such a meeting.
13. This MOU will continue in effect until written notice of termination is given by either party to the other party. Both parties hereby agree to cooperate in good faith to carry out the provisions of this MOU to achieve the objectives set forth herein.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN REGION

Dated: August 5, 2003



Harold J. Singer
Executive Officer

TAHOE REGIONAL PLANNING AGENCY

Dated: 7-2-03



Jerry Wells
Acting Executive Director