Summary of Early Consultation Scoping Comments

Proposed Revision of Conditional Waiver for Timber Harvest and Vegetation Management Activities
and
Proposed Memorandum of Understanding between the Lahontan Water Board and Tahoe Regional Planning Agency for Vegetation Management Activities

Prepared by Lahontan Water Board Staff
July 17, 2008
Revised July 29, 2008

Section 1. INTRODUCTION

This document summarizes public and agency comments received on two proposed projects: 1) Revision of the Lahontan Timber Waiver, and 2) Development of a Vegetation Management MOU between the Lahontan Water Board and the Tahoe Regional Planning Agency (TRPA). On June 30, 2008, Water Board staff held an Early Consultation Scoping meeting for the projects, pursuant to the California Environmental Quality Act (CEQA). Descriptions of the proposed projects were circulated for review, and comments were solicited from interested parties. Fourteen comment letters were received. Water Board staff summarized each letter, and assigned a decimal number to each substantive comment (see Section 4). The comments were then grouped into general categories, as shown in Table 1 (Section 3), and a proposed action or response for each summarized comment is described.

Copies of each comment letter are included in Attachment 1.

Section 2. COMMENT LETTERS AND AUTHORS

Letter 1:	Philip Nemir, Registered Professional Forester, Forestry and Appraisal Services
Letter 2:	Zach Hymanson, Executive Director, Tahoe Science Consortium
Letter 3:	Randy Moore, Regional Forester, US Forest Service - Pacific Southwest Region
Letter 4:	Tom Quinn, Forest Supervisor, USFS - Tahoe National Forest
Letter 5:	Jim Irvin, District Ranger, USFS-Modoc National Forest
Letter 6:	Jennifer Quashnick, Conservation and Community Protection Advocate, Sierra Forest Legacy
Letter 7:	Judy Clot, California Tahoe Conservancy
Letter 8:	Dennis Hall, CAL FIRE, Sacramento Headquarters
Letter 9:	Terri Marceron, Forest Supervisor, USFS- Lake Tahoe Basin Management Unit
Letter 10:	Mary Huggins, CAL FIRE, Amador El Dorado Unit

Letter 11: Greg McKay, President, Lake Tahoe Regional Fire Chiefs Association
Letter 12: Verbal comments from Martin Goldberg, Lake Valley Fire Department (transcribed by Andrea Stanley)
Letter 13: Steve Q. Cannon, Registered Professional Forester, Foothill Resource Management
Letter 14: Jacques Landy, Lake Tahoe Basin Coordinator, US EPA

Section 3. TABLE 1 - COMMENT CATEGORIES AND PROPOSED ACTIONS

Comment Category	Summary of Comments (specific comments from Section 4 are referenced in parenthesis)	Proposed Action
Proposed Timber Waiver Revisions		
Applicability of Waiver to Fuels Reduction Projects	Exempt all types of fuels reductions/forest management projects from waiver requirements (3.2, 4.3, 5.1, 8.2, 9.8, 9.13, 9.14, 13.5).	Fuels reduction projects without proper planning and implementation have the potential to impact water quality, and so cannot be exempted from waiver conditions. However, we are proposing MOU with TRPA to establish a single permitting entity in the Tahoe Basin to streamline the process.
	Exempt subsets of projects; e.g., SEZs, low impact equipment on steep slopes, non-mechanical projects, wildland-urban interface areas (1.3, 1.4, 8.3, 12.2, 12.4).	We are considering expanding types of projects where notification and monitoring are not required, or are reduced.
Scope and Impacts of Waiver Revisions	Revisions are not adequate to address Fire Commission (FC) Report recommendations, specifically 17 & 70 (8.1).	We are proposing revisions that are within the scope of the Lahontan Basin Plan, TRPA's Regional Plan, and CEQA guidelines for the preparation of Mitigated Negative Declarations. Revisions that would require amendments to those documents, or additional environmental analysis, will be considered later.
	Revisions should focus on intent rather than "how-to's" (9.6).	We agree; however, guidance is needed to clarify waiver conditions and compliance requirements.
	Include an update provision to incorporate new data (2.2).	As new data are available, we will incorporate into our project review. Where data suggest no impacts, similar projects will be covered by waiver. Also, waivers can be revised at any time.
	BLM projects should not be included in the Waiver revisions, due to lack of staffing (6.39).	We are proposing to include only BLM projects that pose little or no threat to water quality. We do not anticipate this to be a large workload.
	Slash burning in SEZs should not be included in Waiver revisions - do as pilot project separate from waiver (6.38).	We are considering allowing slash burning in SEZs where impacts would be less-than-significant. These may be conducted under the Waiver under specified circumstances with additional mitigation and monitoring requirements.

Comment Category	Summary of Comments (specific comments from Section 4 are referenced in parenthesis)	Proposed Action
	Impacts of category revisions need full environmental assessment (6.5-6.10).	We agree that an environmental assessment is needed to support any revision. As indicated above, we are proposing to limit scope of revisions to those that can be evaluated with a Mitigated Negative Declaration. A full assessment (EIR) may be needed for other revisions.
	Projects may result in more loading to Lake Tahoe (6.51, 14.3).	BMPs and environmental analysis will continue to be required for Tahoe projects to ensure increased loading does not occur. TRPA has similarly stringent regulations to protect Lake Tahoe.
SEZs	Placing and burning slash in SEZs would require a Basin Plan amendment (6.34).	We disagree that a Basin Plan amendment is needed. The Lahontan Basin Plan does not specifically prohibit slash burning in SEZs. We are considering allowing slash burning in SEZs where impacts would be less-than-significant. Also, in cases where SEZ vegetation disturbance may occur, TRPA and Lahontan have provisions in existing plans to consider exemptions to prohibitions on disturbance. These may be conducted under Waiver with additional mitigation and monitoring requirements.
	Existing data indicates pile burning in SEZs has potential for significant, difficult-to-mitigate impacts (6.35-6.37).	We recognize the potential for impacts to SEZs, as does TRPA. BMPs, mitigation measures and monitoring may be required by TRPA.
	Allow chipping and burning in SEZs/support streamlining SEZ project permitting (7.1, 9.17, 9.2).	We are considering allowing slash burning in SEZs where impacts would be less-than-significant. Chipping is currently allowed as long as measures are taken to prevent transport of chips to flowing waters tributary to Lake Tahoe.
	Proposed SEZ requirements are nebulous, can only be supported if doesn't conflict with FC report (11.7).	We will clarify SEZ requirements in the revised waiver.
Hand Crew Work	Pleased that Lahontan is not proposing to abandon all reporting requirements for these projects (6.20).	We are proposing to require a spreadsheet reporting requirement for hand thinning projects.
	No other Water Board regulates hand thinning; FC report does not require spreadsheet (10.5, 11.5).	Hand thinning projects have the potential to impact water quality, and so are subject to Water Board regulation. A spreadsheet report is not onerous regulation, and allows us to track the extent

Comment Category	Summary of Comments (specific comments from Section 4 are referenced in parenthesis)	Proposed Action
	Hand thinning work should require no additional monitoring, reporting or notification other than NEPA (9.15).	and location of hand thinning work.
	Exempt hand crew work, even in wetland areas (12.1).	Project proponents of hand thinning work would not be required to submit individual Timber Waiver applications.
Reliance on USFS BMPS/BMPEP and NEPA process	Water Board should rely on NEPA for analysis/decision making rather than imposing duplicative reporting and monitoring (3.3, 4.2, 4.4, 5.3, 9.10).	The Water Board has and will continue to rely on NEPA documents for analysis and decision-making. If mitigation monitoring (including implementation and effectiveness monitoring) is provided in the NEPA document, additional reporting and monitoring is not contemplated.
	Water Board should rely on USFS's BMPs/BMPEP to determine effectiveness of water quality management program (5.2, 9.11).	We will rely on USFS's BMPEP for effectiveness and forensic Waiver monitoring requirements, but require additional implementation monitoring. In cases with higher risks to water quality, the Water Board or TRPA may require additional monitoring.
	BMPEP is insufficient for protecting Lake Tahoe (6.13).	The USFS applies the BMPEP to projects in watersheds that exceed thresholds of concern (TOC), which model pre- and post-project conditions. We can require additional monitoring as warranted.
	Lahontan must document and summarize effectiveness of existing monitoring and reporting (6.14).	The existing monitoring and reporting requirements have only been in place for one year (reports due July 15). Staff can evaluate these reports outside the scope of this action.
Additional Monitoring or Information Needs	Increase use of pilot/demonstration projects (2.4, 7.1).	We agree pilot/demonstration projects are useful with adequate mitigation of impacts and monitoring.
	Determine what a permanent impact is (2.5).	We will consider this at a later time.
	Standardize methods of assessment and monitoring (2.6).	We intend to partner with other agencies addressing this issue.
	Find ways to consider short-term less intense effects of fuels treatments versus wildfires (4.1).	This suggestion is outside the scope of this action (i.e., would require an EIR).

Comment Category	Summary of Comments (specific comments from Section 4 are referenced in parenthesis)	Proposed Action
	Gather evidence regarding need for and alternatives to pile burning (6.33).	We agree this information is needed, and will work with other agencies to investigate.
	Develop and implement coordinated Basin-wide monitoring program (8.4).	This suggestion is outside the scope of this action; however, we encourage and will work with stakeholders to implement this comment.
	Estimate fine sediment and nutrient loading to Lake Tahoe from these projects (14.2).	We will evaluate the potential for increased loading in the environmental analysis.
	Monitor and model to characterize impacts and BMP efficiencies; assess cumulative impacts (14.4, 14.5).	We can consider this outside the scope of this action. We encourage and will work with stakeholders to implement this type of action on a Basin-wide level for the community wildfire plans.
	Conduct before and after photo monitoring (14.6).	TRPA has the authority to require monitoring; we will consider this as part of MOU development.
	Conduct risk assessment to evaluate and prioritize fuels reduction projects and locations of BMPs (14.7).	This suggestion is outside the scope of this action, but we will encourage project proponents to do so.
Prohibition Exemption for Public Health & Safety	Revision may constitute a blanket exemption for fuels reduction projects that will be characterized as public health and safety projects, resulting in more projects being granted exemptions and more frequent impacts (6.40, 6.41, 6.42).	Waiver will grant a small subset of projects that meet specific criteria and conditions an exemption to Basin Plan prohibitions.
	Clearly specify criteria to qualify for exemption (6.43, 6.44).	Criteria will be clearly specified.
	How to assess if any "reasonable alternatives" exist (for a fuels reduction project) without reviewing each	Specific criteria will outline findings or information needed to assess if alternatives exist. MOU with TRPA will require compliance with

Comment Category	Summary of Comments (specific comments from Section 4 are referenced in parenthesis)	Proposed Action
	project? How will this happen if TRPA takes over review of all fuels reduction projects? (6.45).	Basin Plan and Regional Plan.
	What is the basis for the need for more exemptions? (6.46).	Community Wildfire Plans identified need for treating SEZs. The Plans consider both hand thinning and mechanical thinning to address public health and safety needs. Hand thinning cannot always be used where fuel loading is too heavy to be removed by hand or access is unsafe for hand crews.
	Agrees that Basin Plan prohibition exemption should be included (9.18).	We propose to include a prohibition exemption in the Waiver for circumstances where specific conditions can be met.
Over-the-snow Revisions	Provide data to show existing Waiver monitoring not needed for over-the-snow projects (6.16, 6.17).	The existing monitoring requirements are not useful for over-the-snow projects. We will develop specific monitoring requirements for these projects.
	Provide data to support "thresholds" to allow over-the-snow under Waiver category 1 (6.18).	The proposed threshold will be "no soil disturbance" rather than a specific snow depth or temperature threshold.
	Over-the-snow proposals should have another option for implementation (6.19).	We agree, and encourage back-up proposals.
	Over-the-snow operations should be covered under category 1b or 1c (10.4, 11.4).	We agree, with specific over-the-snow monitoring.
Urban Lots	Define "urban lot" and make clear distinction that urban lots are adjacent to structures (6.22, 6.23).	We will define urban lots as within an existing, developed subdivision.
	Clarify conditions under which projects on urban lots are allowed or not (6.24-6.30).	We will clarify this.
	No notification, reporting, or monitoring should be required for urban lots, including 200 foot interface around communities (9.16).	The 200 foot interface around communities is not a part of the urban lot revision.
	Remove requirement for land managers to submit ownership maps and changes (10.6, 11.6).	We believe the requirement for ownership maps is reasonable, and will retain it.

MOU Comments		
Support MOU	Actively engage CAL FIRE in any and all future discussion related to MOU (8.5). Strongly agrees/supports efforts to develop MOU (8.6, 9.19).	The public process for developing the MOU will include CAL FIRE. Comment noted. We are working with TRPA to develop an MOU.
Oppose MOU	Other agencies do not have expertise, staffing or statutory authority to ensure water quality objectives are being met (6.1, 6.57). South Shore project and Third Creek project are two examples of why strongly oppose MOU (6.2, 6.58, 6.59). Proposal is short-sighted and clearly raises the potential for significant impacts (6.60, 6.61).	Lahontan is not delegating its statutory authority to protect water quality. We are proposing to waive the requirement of filing a report of waste discharge to the Water Board when permitting and oversight authority is undertaken by the TRPA, pursuant to proposed MOU conditions. The MOU will contain a clause requiring dedicated staffing to implement the MOU, as well as a termination clause if MOU conditions are not met. TRPA has similar water quality protection standards and requirements. The MOU will contain notification "triggers" that compel TRPA to contact Lahontan staff for certain types of sensitive projects. Lahontan staff will have the opportunity to review these projects, propose changes, monitoring/mitigation, or require the project proponent to seek coverage under the Timber Waiver or individual Waste Discharge Requirements. We will conduct an environmental analysis to assess the potential impacts of the proposed MOU.
Conditionally Support	Supports if not in conflict with any recommendations of the Fire Commission report (10.7, 11.8).	Comment noted.
CEQA Comments		
Full Environmental Analysis is needed	Changing Waiver categories, reducing monitoring requirements, allowing work in SEZs and steep slopes, delegating permit authority to TRPA, granting additional authority to EO to allow prohibition exemptions require full environmental assessment (6.3, 6.4, 6.16, 6.17, 6.21, 6.48, 6.49, 6.52, 6.53).	We will conduct an environmental assessment pursuant to CEQA.
Additional time is needed to review project and assess impacts	Lahontan is now reacting quickly to political pressure (6.61) Additional time is necessary to fully review and assess	Lahontan Water Board is being responsive to the Fire Commission and Governor's timelines. We are planning to have public review draft documents of the

	impacts, fuels reduction projects should be implemented to avoid unnecessary harm to water quality (14.1)	proposed projects and environmental analysis by August 15. However, based on public comments and input, the Water Board may extend the timeframe as needed.
Projects may require EIR/statement of overriding considerations	When taken together with proposed EO expanded prohibition-granting authority and other impacts (6.4, 6.41).	The projects are within the scope and context of the Lahontan Basin Plan, TRPA's Regional Plan, and CEQA guidelines for the preparation of Mitigated Negative Declarations. Regarding the proposed changes to the Executive Officer's prohibition-granting authority, the changes are procedural only. The same types of projects may be considered, and the same criteria for water quality protection must be met.

Acronyms:

BMPs	Best Management Practices
BMPEP	Best Management Practices Evaluation Program
CAL FIRE	California Department of Forestry and Fire Protection
CEQA	California Environmental Quality Act
EO	Executive Officer (of the Lahontan Water Board)
EIR	Environmental Impact Report
FC	Fire Commission (California-Nevada Tahoe Basin Fire Commission)
NEPA	National Environmental Policy Act
MOU	Memorandum of Understanding
TRPA	Tahoe Regional Planning Agency
SEZ	Stream Environment Zone
USFS	US Forest Service

Section 4. DETAILED COMMENT SUMMARIES

Letter 1: Philip Nemir, Registered Professional Forester, Forestry and Appraisal Services

1.1 The Timber Waiver requires unnecessary paperwork submissions for projects that clearly have no significant potential impact on water quality.
1.2 The Timber Waiver cannot be effectively enforced by Lahontan Staff.
1.3 All non-mechanical projects should be exempted from paper work, reporting and monitoring requirements.
1.4 Mechanical timber operations or vegetation treatments that are conducted outside of a water course and lake protection zone (WLPZ) should be exempted from paper work reporting and monitoring requirements.
1.5 The above two changes (no paper work for non-mechanical projects or projects outside the WLPZ) would allow the Lahontan Water Board to focus its oversight on projects with the greatest potential to impact water quality and free up valuable staff time, allowing more time for field inspections.

Letter 2: Zach Hymanson, Executive Director, Tahoe Science Consortium

2.1 Requests public record to include reference to the technical workshop on vegetation management in sensitive areas of the Lake Tahoe Basin. The *Independent Review Panel Report* and its supplemental appendices contain information that could be useful to both proposed Water Board projects.
2.2 Include provisions that allow Water Board staff to make informed updates to the Timber Waiver and MOU. Uncertainties exist on how to effectively implement fuel reductions projects in sensitive areas, and development of new technologies continues.
2.3 The Water Board needs a more efficient and timely way to incorporate new information into its regulatory process.
2.4 Consider increasing pilot projects to generate information needed to further inform the regulations under which these projects are reviewed.
2.5 Determine what a permanent impact is and whether the adverse impacts of vegetation management projects are permanent or not.
2.6 Standard methods of ecological measurement and monitoring are needed for vegetation management projects in the Tahoe Basin.
2.7 The development and implementation of standard monitoring methods may or may not result in a reduction of monitoring and reporting requirements; instituting more consistent and uniform approach to monitoring could increase the information base agencies use to plan, implement and regulate future projects.
2.8 Recommends the article “Slash Pile Burning Effects on Soil Biotic and Chemical Properties and Plant Establishment: Recommendations for Amelioration”, Korb J.E. et al.

Letter 3: Randy Moore, Regional Forester, US Forest Service - Pacific Southwest Region

3.1 The current regulatory requirements of the Timber Waiver have resulted in slower progress and higher cost for projects designed to reduce the risks of catastrophic wildfires within the Lahontan Region.

3.2 Exempt USFS activities that reduce the risk of catastrophic wildfire from regulation under the Timber Waiver. These activities include fire suppression, prescribed fire, Burned Area Emergency Response (BEAR), salvage logging, and all fuels reduction treatments on all parts of the landscape, including Streamside Exclusion Zones (SEZs), and including mechanical as well as hand thinning and slash disposal. This change would make the Lahontan Timber Waiver comparable to the Central Valley Regional Board waiver. The USFS would continue to implement and monitor BMPs for exempted activities and report to the Water Board.

3.3 For all other USFS activities for which BMPs have been certified the Water Board should rely on NEPA rather than imposing duplicative waiver and monitoring requirements.

3.4 For all USFS timber harvest and vegetation management activities for which BMPs have been certified, allow Regional Board staff to rely on USFS BMP monitoring to determine the effectiveness of the USFS water quality management program.

Letter 4: Tom Quinn, Forest Supervisor, USFS - Tahoe National Forest

4.1 Find a way to consider the short-term, less intense effects of fuels treatment versus long term and more dramatic effects of the inevitable wildfire.

4.2 Work together to shorten timelines, reduce costs and address these critical problems more quickly. We would like to suggest that you reconsider using more of the analysis, done during our NEPA process, to meet your need for analysis/decision making.

4.3 TNF activities that reduce the risk of catastrophic wildlife (including fire suppression, prescribed fire, BAER, salvage logging, and all fuels reduction treatments on all parts of the landscape, including Riparian Conservation Areas (RCAs) should be exempt from the Timber Waiver, including mechanical treatments, as well as hand thinning and slash disposal.

4.4 For all other TNF timber harvest and vegetation management activities for which BMPs have been certified, allow Regional Board staff to rely on the NEPA process to determine the potential for adverse effects on water quality and prescribe appropriate mitigation and monitoring, rather than imposing duplicative waiver reporting and monitoring requirements.

Letter 5: Jim Irvin, District Ranger, USFS-Modoc National Forest

5.1 Exempt USFS activities that reduce the risk of catastrophic wildlife from regulation under the Timber Waiver. These activities including fire suppression,

prescribed fire, BAER, salvage logging, and all fuels reduction treatments on all parts of the landscape, including SEZs, and including mechanical, as well as hand thinning and slash disposal.

5.2 For all USFS timber harvest and vegetation management activities for which BMPs have been certified, allow Regional Board staff to rely on USFS BMP monitoring to determine the effectiveness of the USFS water quality management program.

5.3 For all other USFS timber harvest and vegetation management activities for which BMPs have been certified, allow Regional Board staff to rely on the NEPA process to determine the potential for adverse effects on water quality and prescribe appropriate mitigation and monitoring, rather than imposing duplicative waiver reporting and monitoring requirements.

Letter 6: Jennifer Quashnick, Conservation and Community Protection Advocate, Sierra Forest Legacy

Comments submitted on behalf of Sierra Forest Legacy, the Tahoe Group of the Sierra Club, and the League to Save Lake Tahoe.

General Comments

6.1 The TRPA, USFS, California Department of Forestry or other agencies do not have the expertise or statutory authority to ensure water quality objectives are met.

6.2 Proposed projects have the potential to deteriorate water quality. A good example may be seen in the recent fuel reduction project undertaken in Incline Village under the oversight of TRPA, which appears to have abdicated any regulatory role, such that the riparian corridor and stream zone have been severely compromised (photos, appendix A to letter 6).

6.3 Under CEQA, Lahontan must conduct a full analysis of the proposed projects. We are concerned about the environmental impacts of the proposed changes to the existing regulatory structure, and intend to participate fully in the CEQA process.

6.4 Lahontan is proposing to change how the Timber Waiver addresses prohibition exemptions (by including an exemption for certain types of public health and safety projects). Lahontan is also proposing to delegate authority to the Executive Officer (EO) to grant exemptions to Basin Plan prohibitions regarding development and disturbance within floodplains, stream environment zones and steep slopes in the Lake Tahoe Basin and Truckee River hydrologic unit. These two projects can not be considered separately and the environmental impacts of the proposal to expand the EO's authority must be considered as part of this project.

Revised Timber Waiver Criteria Categories

6.5 Concerned about basing waiver category criteria solely on threat to water quality. Without the assurance of full environmental review, Water Board involvement and adequate presentation of necessary information, how can the Board identify whether a waiver is appropriate in the first place?

6.6 Land ownership dictates the implementing agency, and each agency is subject to different rules and procedures. If the Board grants a waiver for projects that are exempted from full environmental review, this creates potential for significant impacts to water quality.

6.7 Any change to the waiver which affect the implementation, oversight and monitoring of projects must be based on sound scientific evidence. Lahontan must provide full and current data regarding the impacts of existing activities and how they affect water quality, a precise definition of what types of projects would be eligible for the waiver and what projects would not, and a full accounting of the potential impacts that may occur from this regulatory change. Examples include analyzing environmental impacts of various methods of tree removal for each soil type, moisture condition, vegetation type, etc.

6.8 What are the impacts of each prescription per type of method used? Wouldn't impacts vary by site type/condition? How can Lahontan grant blanket approvals if impacts vary by site?

6.9 Are different prescriptions needed for different areas, and if so, why? Provide supporting data.

6.10 Lahontan should assess land ownership to determine what changing categories would mean. For example, it may turn out that most of the sloped areas to be thinned in the Basin are USFS land. What would be the impacts of changing the categories as it related to sloped lands?

<u>Revised Timber Waiver Monitoring</u>

6.11 Not all agencies have the capacity to do their own monitoring; how will this proposed change in combination with the various capabilities of the agencies affect how monitoring is conducted?

6.12 The explanation for the proposed change implies monitoring is an unnecessary requirement and that reduced monitoring is needed to simplify the Waiver. However, monitoring is legally required for activities subject to a waiver unless the Lahontan is prepared to make a finding that discharges from timber harvest and fuel reduction activities in the Lahontan region do not pose a significant threat to water quality (Water Code § 13269(a)(3)).

6.13 We believe that Lahontan' s Monitoring and Reporting Program (MRP), adopted as part of the 2007 Waiver and applicable to existing 2007 Waiver categories 2 through 5, provides a good model for ensuring that any degradation in water quality is immediately detected and appropriate action taken. Alternative monitoring, such as the BMPEP program preferred by the USFS for Basin projects, is insufficient for protecting a designated Outstanding National Resource Water (ONRW) as Lake Tahoe.

6.14 Lahontan must document the effectiveness of the existing monitoring and reporting program (MRP), including a summary of the reports submitted by applicable agencies.

6.15 If Lahontan is going to reduce the number of projects for which the MRP will apply, Lahontan must present substantial data showing why monitoring is unnecessary for each type of project that will be moved to Category 1. Evidence shall include data taken from projects of each type which shows no impacts from

those projects. Evidence must also demonstrate that mitigation measures/BMPs that are necessary to prevent said impacts can be feasibly and successfully implemented in the field.

Revised Timber Waiver Monitoring for Over-the-snow Operations

6.16 As part of its CEQA review, Lahontan must present evidence showing the MRP is unnecessary for regulating over-the-snow operations and that the specified monitoring program (when developed) will provide equal or superior environmental protection.

6.17 Specifically, Lahontan must present for public review the data behind staff findings as stated in the explanation, that "*when effective BMPs are utilized, over-the-snow timber harvest and vegetation management activities should not pose a significant threat to water quality*."

6.18 Data must support any proposed "thresholds" that would allow operations under Category 1. For example, if Lahontan proposes a specific minimum snow depth and temperature for operations, Lahontan must include the data that supports the selection of the proposed minimum requirements.

6.19 We request Lahontan require any entity considering over-the-snow operations to provide another option for project implementation (which can also meet the Waiver requirements in case snow conditions are not met).

Revised Timber Waiver Hand Crew Thinning Work

6.20 Pleased to see that Lahontan is not proposing a full abandonment of all reporting for these projects, as requested by the Commission.

6.21 As part of its CEQA compliance, Lahontan must fully explain the difference between the existing waiver requirements for hand projects versus what is proposed.

Revised Urban Lot Approach

6.22 Lahontan must clarify what is meant by "urban lot ownership." In other words, how does Lahontan define an "urban lot" with respect to this proposal? Where does the definition come from?

6.23 We were informed that the intent is to make this change with respect to urban lots which are adjacent to structures (not lots that may be considered 'urban lots' by public agencies but which are not located next to structures; for example, this would exclude the USFS "urban lots" on the lakeside of Tahoe Mountain Road, which are not located immediately next to any structures). We request that Lahontan make this distinction very clear, including the development of specific criteria which very clearly define Lahontan's definition of an "urban lot" as it applies to their regulations.

6.24 How does this affect publicly owned lands in the Basin? What are the "certain criteria" that would have to be met (as stated in the explanation in Table 2)?

6.25 Does Lahontan expect public land managers to thin all qualifying urban lots to meet the flame lengths prescribed by PRC 4291? Or will there be areas where the USFS prescriptions would apply instead? How will Lahontan distinguish between the different types of prescriptions?

6.26 Will Lahontan specify different criteria for different land types (e.g. flat, dry versus sloped or wet/SEZ land types)? Or will all areas be treated the same (with one set of criteria)?

6.27 If the urban parcel does not qualify as an urban lot per Lahontan's criteria, which category will the urban parcel fall under?

6.28 Will Lahontan review urban lot projects on a regular basis (every 6 months, annually, etc.) to confirm no discharge associated with urban lot projects allowed under the proposed change? If not, how will Lahontan ensure this proposed change will not result in additional discharges?

6.29 How will Lahontan address privately-owned lands without structures that meet all other 'urban lot' criteria (except ownership)? (Lahontan has stated private landowners need not notify Lahontan to implement PRC 4291 within 150' of their home; however, what is the case where there is no home?)

6.30 Will there be language in the Waiver allowing a public land management agency to request an urban lot that does not meet the criteria be considered an 'urban lot' per this Waiver? If so, under what conditions would Lahontan allow this?

Timber Waiver BLM Vegetation Management Activities

6.31 At this scoping stage, Lahontan has not provided adequate information for the public to assess the impacts of this proposed change. To comply with CEQA requirements, the public need to have detailed information.

6.32 BLM sponsored projects have the potential for significant impacts to water quality. Further, the scope of this proposed waiver is considerable, covering thousands of acres of BLM managed land. We do not believe that Lahontan has the resources to address the effects of such a large waiver within this process, which is otherwise mostly focused on activities occurring in the Tahoe Basin and immediate surroundings. For that reason, we would suggest Lahontan drop this component of its newly proposed waiver until such time as it and the public have a greater opportunity to focus on this issue.

Revised Timber Waiver SEZ Work

6.33 Lahontan should gather evidence from the implementing agencies regarding the need for pile burning in SEZs, including alternatives to pile burning that are available and the benefits and consequences of all alternatives. Any future changes must require alternatives be considered first.

6.34 The new Waiver must meet the existing Basin Plan requirements. We believe placing and burning slash in SEZs (as proposed in Early Consultation Table 2, revision 5) would require a Basin Plan amendment, which would require substantial evidence (scientific data) to make the necessary findings.

6.35 A summary of existing information regarding pile burning in SEZs indicates that pile burning in SEZs has the potential for significant impacts (i.e., unproductive, hydrophobic soils that are more vulnerable to invasive weeds) and should not be included in any waiver.

6.36 For lands managed by the Forest Service, there is clear intent and direction in the 2001 and 2004 Sierra Nevada Framework Record of Decision, Riparian Conservation Objectives (RCO #4, standards and guidelines 109 and 111).

Although these standards are discussing prescribed fire, the language about the need for caution to minimize disturbance to ground cover and riparian vegetation from prescribed fire certainly counter-indicates more intensive impacts from pile burning in these sensitive areas.

6.37 As recognized at the 6/30/08 public meeting, no data exists which would suggest impacts can be mitigated. Therefore, based on the data available at this time, Lahontan can not make findings to support this proposed change.

6.38 Regarding pilot projects to determine impacts: research questions should be addressed by researchers, with appropriate research projects, monitoring programs and peer review processes, before regulations are modified in any way related to such projects. If there is a clear need to consider more pile burning in SEZs, then we would be pleased to see the Tahoe Science Consortium and/or other qualified research groups create an appropriate pilot project in direct coordination with Lahontan Water Board (and TRPA) staff.

6.39 We suggest Lahontan remove this proposed change (allowing some slash burning in SEZs) from the new Waiver language and instead, include this as one of the research questions for the Tahoe Science Consortium and/or other research groups to address in the future (perhaps through pilot projects).

<u>Timber Waiver Proposed Exemption from Basin Plan Requirements</u>

6.40 Is Lahontan proposing to provide a blanket prohibition exemption for fuels reduction projects in the Basin, that will hereinafter be categorized as public health and safety projects in the new Waiver?

6.41 The discharge prohibitions are substantive mandates set forth in the Basin Plan to ensure that water quality objectives are met and that future TMDLs can be achieved. Fuel reduction logging has the potential to discharge sediment and vegetative material into stream courses, which will adversely affect Basin Plan objectives. A categorical exemption for such activities from Basin Plan prohibitions against discharge of such pollutants will contribute to cumulatively significant impacts, which would appear to violate Basin Plan standards, water quality objectives, and future TMDL compliance. To approve such an approach, Lahontan would have to adopt a statement of overriding considerations pursuant to an environmental impact report. We believe that the adoption of such a statement, while literally allowable under CEQA, would violate the Basin Plan and Section 303(d) of the federal Clean Water Act.

6.42 Proposed changes that will result in more projects being granted prohibition exemptions will mean that activities prohibited because of their environmental impacts will occur with greater frequency. This clearly requires an environmental assessment (that utilizes data applicable to the Tahoe Basin) as well as a review of how this will affect the draft TMDL reductions (which for forest uplands, are based on existing regulations).

6.43 Lahontan must clearly identify what the “specified criteria” would be for projects to qualify for the exemption; however, the outcome will still be more exempted projects, and thus the previous comment still applies.

6.44 Which criteria will Lahontan use to assess whether a project is for “public health and safety?"

6.45 The exemptions in the Basin Plan state include criteria that "no reasonable alternatives" are available. If Lahontan is proposing to exempt all fuels reduction projects, how will Lahontan ensure that there are no reasonable alternatives to each project without reviewing each project? How will Lahontan ensure this if TRPA takes over review of all fuels reduction projects?

6.46 What is the basis for the purported need for more exemptions?

6.47 What is the relationship between the Basin Plan/208 Plan and current Lahontan efforts to develop a TMDL; if the TMDL is in draft form, are there aspects of the current Basin Plan/208 Plan that provide narrative/quantitative descriptions of the standards that the TMDL will have to meet? How do those standards relate to exemptions for fuels reduction projects in protected areas (e.g. SEZs, steep slopes, etc.)?

6.48 Regarding Lahontan' s proposal, discussed above, titled "Delegating authority to the executive director to grant exemptions to Basin Plan prohibitions regarding development and disturbance within floodplains, stream environment zones, and steep slopes in the Tahoe Basin and Truckee River Hydrologic Unit" (notice dated 7/3/08):

- How does this proposal relate to the proposed changes in the Waiver?
- Is there a need for this proposal to be adopted before the proposed changes to the Waiver could be adopted?
- What are the impacts of the 7/3 proposed change on the Waiver update and the MOU update?

6.49 Any proposed changes which would result in the creation of new roads, or increased logging of and use of equipment on steep slopes will necessitate an additional environmental assessment.

6.50 The cost to implement sediment and nutrient reduction projects on unpaved roads and harvested steep slopes is extremely high. How is trading short term cost savings for long term cost increases (as well as the sediment loading that occurs in the meantime) consistent with the Basin Plan? How is this consistent with implementing agencies' interests in reducing costs?

6.51 Given the level of uncertainty related to forest management practices, and the significant reductions needed to meet water quality standards, how can Lahontan justify changes that would allow or potentially allow more sediment loading to Lake Tahoe? We do not believe that reducing environmental review for activities with the potential for significant impacts, given this uncertainty, is consistent with the Basin Plan and Lahontan' s mission to protect water quality in the Tahoe Basin and in the Lahontan region.

6.52 As part of its CEQA review process for this project, Lahontan must provide informative discussion regarding the following issues regarding SEZs, unpaved roads, steep slopes, cost and uncertainty.

6.53 Lahontan has made the assumption that adequate BMPs exist that can fully mitigate impacts from disturbance in these areas. Yet Lahontan has also stated that BMPs can not fully mitigate impacts from forest management: *"Even if Best Management Practices are followed, some impact on water quality can be expected from forest management activities." (Basin Plan, p 5.13-1*). Lahontan

must explain these statements, and include the data upon which Lahontan is basing its conclusions regarding the ability of BMPs to mitigate impacts.

Proposed Changes on Memorandum of Understanding

6.54 What is meant by "duplicity in regulation and permitting for fuel reduction and forest enhancement projects?"

6.55 How has Lahontan permit requirements slowed fuel reduction projects in the past?

6.56 The intent to eliminate redundancy in permitting could be achieved by providing one location for applicants to go (e.g. TRPA office) for projects and having TRPA and Lahontan staff work together " behind the scenes" to review fuels reduction projects and issue one unified permit.

6.57 We do not believe that TRPA have the staff capacity and expertise to take over the work Lahontan has been doing.

6.58 TRPA' s recent decision not to require an EIS per TRPA' s Compact for the South Shore Project (where Lahontan and the USFS determined an EIS/EIR to be necessary) provides a significant example of TRPA' s reliance on Lahontan to address water quality issues. (This also provides a major example of TRPA' s failure to implement its regulatory responsibility that includes 8 other threshold categories besides water quality, for which the USFS [and Lahontan] will not be addressing).

6.59 We are extremely concerned about the Tahoe Fire Commission's cavalier treatment of water quality protection and transfer of permitting authority and oversight for such protection from Lahontan to the TRPA. We are strongly opposed to such an arrangement for good reason. Photographs (included in letter) demonstrate the clear lack of scientific understanding of the ecology of riparian area conservation and the protection of highly sensitive SEZ areas as demonstrated by the operator and manager of the Third Creek project (in Incline Village, NV)

6.60 We believe that Lahontan' s apparent attempt to abdicate their expert regulatory authority to TRPA is short-sighted, unnecessary and clearly raises the potential for significant impacts on water quality in the Tahoe Basin. If Lahontan persists in adopting this measure, its CEQA review process must address these issues.

- How will Lahontan ensure its requirements are met for every project?
- What will be the process for auditing TRPA's handling of fuels reduction projects?
- How often will Lahontan perform this audit?
- Are there examples of similar delegations of permitting responsibility from Lahontan? How have they worked? What have auditing procedures revealed?
- What will be the appeal process for Lahontan to appeal TRPA's decision? How many days will be provided?
- What options will be available for Lahontan to appeal a project?
- What happens if Lahontan misses an appeal period and later realizes project impacts are occurring (although TRPA-approved project conditions are being met)?

- What can and will Lahontan do to prevent further impacts from such a project?
- What type of mediation will Lahontan write into the proposed MOU?
- How will Lahontan handle future amendments to the Code by TRPA which impact TRPA's regulation of fuels reduction activities?
- Will the proposed MOU make changes to how Lahontan regulates timber activities in addition to the changes proposed by the waiver?

6.61 Lahontan has traditionally played a critical role in protecting water quality within the Tahoe Basin. For that reason, we have substantial concerns that Lahontan is now reacting quickly to political pressure to dispense with their traditional and legally required regulatory authority over projects that have the potential to take us further away from the attainment of water quality objectives for the Basin.

Letter 7: Judy Clot, California Tahoe Conservancy

7.1 Would like ability to chip and burn in SEZs.

7.2 Would like to use some of their projects as demonstration projects to collect information on impacts of chipping and burning.

7.3 Over 80 percent of CTC's projects have SEZs, and these site constraints have restricted treatment or delayed some projects due to high cost of debris removal, access issues and employee safety.

Letter 8: Dennis Hall, Registered Profession Forester, CAL FIRE, Sacramento Headquarters

<u>Proposed Timber Waiver Comments</u>

8.1 The proposed Timber Waiver revisions are not adequate to address critical findings and implement recommendations of the Fire Commission's report, specifically recommendations 17 and 70.

8.2 Waiver revisions do not allow adequate flexibility to conduct low impact operations within an SEZ. Waiver category 1(a) should be expanded to include all fuels reductions projects implemented by hand crews, including those in SEZs.

8.3 Waiver category 1(a) should be expanded to include all fuels reductions projects that use low impact mechanical equipment combined with, or in addition, to hand crews.

8.4 CAL FIRE welcomes the opportunity to work with the Board and stakeholders to develop and implement a coordinated Basin-wide monitoring program, consistent with recommendation 72.

<u>Proposed Vegetation Management MOU Comments</u>

8.5 Actively engage CAL FIRE in any and all future discussions related to the proposed TRPA/Lahontan MOU.

8.6 CAL FIRE strongly agrees with the Commissions recommendations to develop an MOU between TRPA and Lahontan.

Letter 9: Terri Marceron, Forest Supervisor, USFS- Lake Tahoe Basin Management Unit

Proposed Timber Waiver Comments

9.1 Activities conducted by USFS to reduce wildfire risk have net beneficial effects on water quality, as described in the Fire Commission's report in Findings 1 and 5, and supported by scientific literature.

9.2 Strongly supports and encourages consideration of SEZ fuels/vegetation projects similar to erosion control/ecosystem restoration programs and streamline permitting accordingly.

9.3 LTBMU analyzes projects in compliance with NEPA, designs projects consistent with the Forest Plan, is obligated to comply with numerous laws and regulations including the Clean Water Act, implements BMPs, and has demonstrated a commitment to water quality management through monitoring, reporting and adaptive management.

9.4 Lahontan's current regulatory requirements have resulted in slower progress and higher costs for projects to reduce wildfire risk.

9.5 The Heavenly SEZ Fuels Reduction project and the South Shore SEZ Sensitivity Rating System are two local examples of additional Lahontan requirements and approvals that could be streamlined.

9.6 Suggests that the Timber Waiver revisions focus on "intent" not "how to's" to reduce months of back-and-forth dialog on waiver requirements.

9.7 LTBMU projects are planned and implemented by a large, well-trained staff with broad expertise. This demonstrates LTBMU's commitment to water quality protection.

9.8 Exempt USFS activities that reduce catastrophic wildfire risk, including fire suppression, prescribed fire, Burned Area Emergency Response, hazard tree mitigation, thinning, and all fuels reduction treatment on all parts of the landscape, including SEZs. Mechanical and handing thinning methods should be allowed.

9.9 USFS would continue to monitor exempted activities and report results to Lahontan.

9.10 For all other USFS vegetation management activities (i.e., forest restoration in meadows and aspen stands) for which BMPs have been certified, use the NEPA process to determine potential for adverse effects on water quality and prescribe mitigation and monitoring, rather than using the Timber Waiver. Lahontan does not need to design, develop or impose measures that are already within USFS programs and processes.

9.11 For fuels reduction and forest restoration projects for which BMPs have been certified, Lahontan should rely on USFS BMP monitoring to determine effectiveness.

9.12 Supports Lahontan responding to violations and enforcing the California Water Code on National Forest System lands throughout the Lahontan region.

9.13 Revising the Timber Waiver to categorize fuels reduction activities based on threat to water quality is not needed, since all fuels reduction activity should be exempt from the waiver.

9.14 All technologies (including over-the-snow timber operations) should be exempt from the Timber Waiver. Continued focus on treatment methods is inappropriate. USFS BMPs and BMPEP will continue to be applied regardless of treatment method.
9.15 Hand-thinning should require no additional reporting, monitoring, or notification to Lahontan, beyond what is required through NEPA. We do not agree with the requirement of a spreadsheet identifying hand thinning projects.
9.16 Agrees that no notification, reporting, or monitoring should be required for vegetation management activities on urban lots, and this should include a 200 foot interface around communities as part of the Urban Lot program.
9.17 Agrees with burning of slash piles in SEZs where adequate BMPs and monitoring are proposed, and this should include spreading of chipped materials.
9.18 Agrees that a Basin Plan prohibition exemption for certain types of projects (public health and safety) should be included.

Proposed Vegetation Management MOU Comments

9.19 Supports efforts to develop a vegetation management MOU with TRPA and will provide comments once a formal proposal is developed.

Letter 10: Mary Huggins, Registered Professional Forester, CAL FIRE, Amador El Dorado Unit

Proposed Timber Waiver Comments

Comments on Early Consultation Table 1 (Proposed Minor Revisions to the Existing Timber Waiver)

10.1 Change Cal Fire to CAL FIRE.
10.2 Semi-annual reports should not be required when a project has not commenced (regarding proposed minor Timber Waiver revision 9)
10.3 Remove this section of non-required language (regarding proposed minor Timber Waiver revision 11)

Comments on Early Consultation Table 2 (Proposed Substantial Revisions to the Existing Timber Waiver)

10.4 Over the snow operations should be covered under waiver category 1b or 1c as per recommendation 17h of the Fire Commission report.
10.5 Delete this proposed change (substantial revision 3) as it conflicts with recommendation 17 l, which does not require a spreadsheet. The spreadsheet requirement does not remove the requirement for filing a Timber Waiver for hand thinning per recommendation 17 h, but only changes the reporting format. No other Water Quality Control Board regulates hand thinning.
10.6 Remove requirement from revision 4 for land managers to submit ownership maps and ownership changes to the Lahontan. This is unnecessary and conflicts with recommendations 17, 70 and 32 of the Fire Commission report.

Proposed Vegetation Management MOU Comments

10.7 The proposals for the vegetation management MOU can only be supported if not in conflict with any recommendations of the Fire Commission report, as well as comments above (comments 10.1-10.6, in this document).

Letter 11: Greg McKay, President, Lake Tahoe Regional Fire Chiefs Association

Proposed Timber Waiver Revision Comments

Comments on Early Consultation Table 1 (Proposed minor revisions to Timber Waiver)

11.1 Change Cal Fire to CAL FIRE

11.2 Semi-annual reports should not be required when a project has not commenced (regarding proposed minor Timber Waiver revision 9)

11.3 Remove this section of non-required language (regarding proposed minor Timber Waiver revision 11).

Comments on Early Consultation Table 2 (Proposed substantial revisions to Timber Waiver)

11.4 Over-the-snow operations should be covered under waiver category 1b or 1c as per recommendation 17h of the Fire Commission report (regarding proposed substantial Timber Waiver revision 2).

11.5 Delete this proposed change (substantial revision 3) as it conflicts with recommendation 17 l, which does not require a spreadsheet. The spreadsheet requirement does not remove the requirement for filing a Timber Waiver for hand thinning per recommendation 17 h, but only changes the reporting format. No other Water Quality Control Board regulates hand thinning.

11.6 Remove requirement from revision 4 for land managers to submit ownership maps and ownership changes to the Lahontan. This is unnecessary and conflicts with recommendations 17, 70 and 32 of the Fire Commission report.

11.7 The proposed change allowing placing and burning slash piles in SEZs (given adequate mitigation, BMPs and monitoring) is nebulous and can only be supported if not in conflict with recommendations 17, 70 and 32 of the Fire Commission report.

Proposed Vegetation Management MOU Comments

11.8 The proposals for the vegetation management MOU can only be supported if not in conflict with any recommendations of the Fire Commission report, as well as comments above (comments 11.1-11.7, in this document).

Letter 12: Verbal comments from Martin Goldberg, Lake Valley Fire Department (transcribed by Andrea Stanley)

12.1 There should be an exemption for hand crew work, even in wetland areas.

12.2 There should be an exemption for projects that involve low impact equipment on upland areas.

12.3 Any fuel reduction project conducted in the wildland-urban interface should not be regulated by the Timber Waiver.

12.4 More time and effort should be invested in educating the public on fire safety and fuel reduction than on compliance with waiver requirements. The waiver adds confusion to public involvement in reducing vegetative fuels on their land.

Letter 13: Steve Q. Cannon, Registered Professional Forester, Foothill Resource Management

13.1 Any degradation of the quality of Lake Tahoe cannot be blamed on timber harvesting. There has been no significant amount of commercial timber harvesting conducted in the Tahoe Basin for the last 25-35 years. The amount of commercial timberland left in private hands is so minimal that if intensive timber management were conducted on those lands less than 5% of the land in the Basin would be affected. The USFS is very unlikely to implement timber sales that involve anything more than commercial thinning of small diameter trees in the foreseeable future.

13.2 The effects of the Angora Fire have been very clear. If an active vegetation management program, including the removal of commercial size trees, is not implemented over the next 10-20 years, another fire, perhaps more devastating, will occur and the impact on the quality of the lake will be dramatic. We (as humans) have neglected our responsibilities because some uneducated and inexperienced individuals and groups have preferred not to manage our forest resources because of their unsubstantiated fear of some nebulous "impacts."

13.3 The California Forest Practice rules are the most stringent and environmentally sound regulations associated with forest management in the United States.

13.4 The quality of the waters of Lake Tahoe is not any more important than the quality of the waters in any other part of the state. It is absolutely imperative that any human-caused activity should minimize or mitigate to an insignificant level any impacts to water quality in the state of California. To suggest that the implementation of the Forest Practice Rules does not adequately protect the waters of Lake Tahoe or any other streamcourse or lake in California only demonstrates a lack of knowledge of those rules.

13.5 Forest management activities should be removed as a point source of pollution and unconditional waivers should be granted to timber harvesting and vegetation management activities.

Letter 14: Jacques Landy, Lake Tahoe Basin Coordinator, US EPA

14.1 EPA considers that additional time is necessary to fully review the suggested projects and determine their impacts.

14.2 EPA recommends that fuels hazard reduction projects in the Tahoe Basin be subject to systematic monitoring and/or research, data collection, and analysis, to estimate fine sediment and nutrient load contributions to estimate their impacts on clarity.

14.3 We note that a report prepared in support of the Lake Tahoe TMDL states ". . . given the types of low-impact treatments and regulatory limits on mechanical treatments on steep slopes and SEZs, fuels treatments are unlikely to increase sediment and nutrient loading . . . ". We now question this statement given the expedited schedule for fuels hazard reduction and the reduced oversight and requirements contemplated by the Lahontan Water Board's proposed actions.

14.4 EPA believes a monitoring and modeling effort is needed to characterize impacts of these projects and benefits of BMPs implemented for these projects. The resulting model should be used to evaluate the tradeoffs between implementing these BMPs and requiring increased load reduction efforts from other TMDL sources.

14.5 A representative sample of projects should be monitored to inform a model that could be used to provide loading estimates and determine the cumulative impacts of these projects to water quality, natural resources and wildlife habitat.

14.6 Photo monitoring should be included before and after the project is implemented, and used to document and/or avoid Clean Water Act Section 404 violations that may result from these projects.

14.7 Tahoe Basin water quality and other regulatory partners should conduct a comprehensive risk assessment to evaluate and prioritize fuels hazard reduction projects and determine locations and nature of BMPs to mitigate impacts.

14.8 Lahontan should partner with the NRCS and local resource conservation districts to assist with project oversight, photo monitoring and BMP assistance. Project authorization should include a requirement that implementers make every effort to minimize impacts to water quality to the maximum extent practicable.

Attachment 1: Copies of Comment Letters