

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

**MEETING OF SEPTEMBER 15, 2011
Kings Beach**

ITEM: 10

SUBJECT: **RESCISSION OF WAIVER OF FILING A REPORT OF WASTE DISCHARGE AND WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR VEGETATION MANAGEMENT ACTIVITIES REGULATED BY THE TAHOE REGIONAL PLANNING AGENCY AND AUTHORIZING THE LAHONTAN WATER BOARD'S EXECUTIVE OFFICER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE TRPA (BOARD ORDER NO. R6T-2008-0038).**

CHRONOLOGY: December 11, 2008: The Water Board adopted Board Order No. R6T-2008-0038.

DISCUSSION: **Reason for Rescission**
On July 14, 2011, El Dorado County Superior Court Judge Steven C. Bailey issued a final judgment on the Petition for a Writ of Mandate regarding a Resolution (Board Order No. R6T-2008-0038) that authorized the Water Board to enter into a Memorandum of Understanding with the Tahoe Regional Planning Agency (TRPA). That Board Order also waived the requirement for project implementers to file a report of waste discharge for vegetation management projects that were regulated by the TRPA.

The El Dorado County Superior Court ruling required Water Board staff to provide notification to persons or entities conducting vegetation management and fuels reduction projects in the Tahoe Basin that no discharge or category of discharges will be covered under the waiver authorized by the Board Order after August 13, 2011. The Judge further directed that the Water Board rescind the Board Order at its next regularly scheduled meeting and file a return demonstrating compliance with the Writ no later than October 3, 2011.

Compliance with Writ of Mandate

Water Board staff drafted a letter to all known project implementers and agencies notifying them that any discharge related to vegetation management activities would not be covered by the Board Order after August 13, 2011. The July 25, 2011, letter also directed project implementers to enroll their projects under the Water Board's existing 2009 Timber Waiver. This Rescission Order and its subsequent filing, no later than October 3, 2011, will

complete the Water Board's legal requirements to comply with the Writ of Mandate.

Moving Forward: Regulation of Vegetation Management Projects in the Tahoe Basin

Staff met with many of the Tahoe Basin vegetation management implementing agencies on August 4, 2011, to present a short workshop on the 2009 Timber Waiver.

The 2009 Timber Waiver was developed and adopted with a streamlining of the regulatory process in mind, and has categories for automatic enrollment for those types of projects deemed to have limited potential for water quality impacts. Many of the projects being conducted by Tahoe Basin Fire Protection Districts fit into 2009 Timber Waiver categories that are automatically enrolled under the waiver without required submittals and notifications to the Water Board.

For projects that are relatively more complex, 2009 Timber Waiver categories require the submission of an application and project documents, and may require a review period and application acceptance prior to enrollment. Staff typically must spend one or two days reviewing each complex application before questions, or comments, or acceptance can be communicated with the applicant. To date all active projects have been enrolled under the 2009 Timber Waiver without interruption.

RECOMMENDATION:

Adopt the Resolution as proposed.

ENCLOSURE	ENCLOSURES	Bates Number
1	Board Order No. R6T-2011-(Proposed)	10-3
2	Board Order No. R6T-2008-0038	10-6

ENCLOSURE 1

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

BOARD ORDER NO. R6T-2011-PROPOSED

**RESCISSION OF WAIVER OF FILING A REPORT OF WASTE DISCHARGE
AND WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR VEGETATION
MANAGEMENT ACTIVITIES REGULATED BY THE TAHOE REGIONAL
PLANNING AGENCY**

AND

**AUTHORIZING THE LAHONTAN WATER BOARD'S EXECUTIVE OFFICER
TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE TRPA,
BOARD ORDER NO. R6T-2008-0038**

Placer and El Dorado Counties

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

1. Discharger

The Water Board adopted Board Order No. R6T-2008-0038 on December 11, 2008, waiving the filing of a report of waste discharge and/or waste discharge requirements for proponents of vegetation management activities and discharges in the areas of the mutual jurisdiction of the TRPA and the Water Board if these activities are regulated by the TRPA.

2. Facility Description

All lands subject to timber harvest and vegetation management activities in the California portion of the Lake Tahoe Basin under mutual jurisdiction of the Water Board and the TRPA. The California portion under the jurisdiction of both the TRPA and the Water Board does not include the Alpine County portion of the Lake Tahoe watershed, but does include part of the Truckee River Hydrologic Unit, between the Lake Tahoe outlet dam and the Bear Creek confluence.

3. Description of Waste Discharge

Discharges of waste associated with timber harvest and vegetation management activities include, but are not limited to: soil, silt, sand, clay, rock, felled trees, slash, sawdust, bark, petroleum products, and pesticides.

4. Reason for Action

On July 14, 2011, El Dorado County Superior Court Judge Steven C. Bailey issued a final judgment on the Petition for a Writ of Mandate regarding Resolution No R6T-2008-0038. The El Dorado County Superior Court ruling required that the Water Board's Executive Officer notify persons or entities conducting vegetation management and fuels reduction projects in the Tahoe Basin that no discharge or category of discharges will be covered under the waiver authorized by the Board Order after August 13, 2011. The Judge further directed that the Water Board rescind the Board Order at its next regularly scheduled meeting and file a return demonstrating compliance with the Writ no later than October 3, 2011.

5. CEQA Exemption

This action is being taken by this regulatory agency to revoke permits issued pursuant to the California Water Code and as such is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Title 14 California Code of Regulations, Section 15321 (a) (2).

6. Notification

The Board has notified affected and interested persons of its intent to rescind Resolution R6T-2008-0038.

7. Hearing

The Board in a public meeting heard and considered all comments pertaining to this rescission Order.

IT IS HEREBY ORDERED THAT Board Order No. R6T-2008-0038 is rescinded.

I, Harold J. Singer, Executive Officer, do hereby certify the following is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on **September 15, 2011**.

HAROLD J. SINGER,
EXECUTIVE OFFICER

ENCLOSURE 2

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2008-0038

**WAIVER OF FILING A REPORT OF WASTE DISCHARGE AND WAIVER OF WASTE
DISCHARGE REQUIREMENTS FOR VEGETATION MANAGEMENT ACTIVITIES
REGULATED BY THE TAHOE REGIONAL PLANNING AGENCY
AND
AUTHORIZING THE LAHONTAN WATER BOARD'S EXECUTIVE OFFICER TO
ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE TRPA**

INTRODUCTION

This resolution waives the need for proponents of vegetation management activities in the Lake Tahoe Basin to apply for or receive timber harvest or vegetation management permits from the California Regional Water Quality Control Board, Lahontan Region, (Water Board), before initiating work on their project. In order to take advantage of this waiver of filing a report of waste discharge (i.e., project application) with the Water Board or receiving waste discharge requirements (i.e., permit) from the Water Board, the project must be regulated by the Tahoe Regional Planning Agency (see Waiver and Conditions, paragraph 1, of this Resolution) under any of its authorizations (e.g., exempt, qualified exempt, or tree removal permits) and the project must not cause a significant adverse effect to the environment that cannot be mitigated to a level of insignificance (see Waiver and Conditions, paragraph 2, of this Resolution).

This waiver applies to the California portion of the Lake Tahoe Basin under mutual jurisdiction of the Water Board and the TRPA. The Lake Tahoe Basin includes lands in El Dorado and Placer Counties, California, which are tributary to Lake Tahoe. The California portion under the jurisdiction of both the TRPA and the Water Board does not include the Alpine County portion of the Lake Tahoe watershed, but does include part of the Truckee River Hydrologic Unit, between the Lake Tahoe outlet dam and the Bear Creek confluence.

FINDINGS

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

- A. California Governor Arnold Schwarzenegger issued a Proclamation strongly encouraging the Lahontan Water Board and the TRPA to take expedited action to implement the recommendations of the California-Nevada Tahoe Basin Fire Commission that relate to the Lahontan Water Board and the TRPA.

- B. The California-Nevada Tahoe Basin Fire Commission Report of May 2008 recommended the Governor of the state of California direct, within the framework of his legal authority, the Water Board to transfer to TRPA no later than October 1, 2008, by a suitable Memorandum of Understanding (MOU), all responsibility of the Water Board relating to fuel reduction projects performed within the Lake Tahoe Basin. The intent is to have an expedited single permitting process, eliminating the need for the Water Board to issue a second permit, and to achieve consistency in the application of environmental laws as it relates to these kinds of projects in the Lake Tahoe Basin.
- C. The Water Board 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 Water Board, TRPA, and the regulated community to avoid unnecessary duplicative regulation.
- D. The Water Board and TRPA have developed a streamlined, cooperative approach toward effective regulation of vegetation management activities in the Lake Tahoe Basin by entering into a MOU designating the TRPA as the agency responsible for review and permitting vegetation management projects.
- E. 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.
- F. The Water Board 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.
- G. 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 Region, which may have a substantial effect on natural resources of the Region. To protect these resources, the Compact directs TRPA to establish and ensure attainment of environmental standards, including water quality, soil conservation, and fisheries.
- H. The TRPA is the designated water quality planning agency under Section 208 of the Clean Water Act. The TRPA's "208 Plan" was certified by the states of California and Nevada and the USEPA, and establishes control measures to protect water quality including a tree removal permit system, stream environment zone and wetland protection policies, vegetation protection and management provisions, prohibitions against fill in 100-year floodplains, and use of Best Management Practices (BMPs). The TRPA's Regional Plan also provides for attaining and

maintaining the strictest water quality standards established by federal or state agencies as required by Article 5, section 5(d) P.L. 96-551, and the TRPA Code of Ordinances incorporates water quality standards as equally restrictive as those contained in the Water Quality Control Plan for the Lahontan Region (Lahontan Basin Plan).

- I. California Water Code Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than to a community sewer system, shall file with the appropriate Water Board a report of waste discharge (ROWD) containing such information and data as may be required by the Water Board.
- J. The Water Board has a statutory obligation to prescribe waste discharge requirements, except where the Water Board determines, after any necessary regional board meeting, that a waiver of waste discharge requirements for a specific type of discharge is consistent with any applicable state or regional water quality control plan and is in the public interest pursuant to California Water Code Section 13269.
- K. California Water Code Section 13269 includes the following provisions:
 - a. A waiver may not exceed five years in duration, but may be renewed by the regional board.
 - b. The waiver shall be conditional and may be terminated at any time by the regional board.
 - c. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based monitoring, except the regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.
 - d. Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions.
 - e. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors.
 - f. Monitoring results must be made available to the public.
 - g. The Water Board may include as a condition of a waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). At the time of this hearing, the State Water Board has not established annual fee regulations with respect to vegetation management activities.

- L. The Water Board finds that waiving the filing of a ROWD and waste discharge requirements for the following types of vegetation management activities within the area of mutual jurisdiction of the TRPA and the Lahontan Water Board is in the public interest when such activities are effectively regulated by the TRPA:

Activities related to the management of vegetation for the purposes of:

- a. fuel reduction;
- b. forest thinning;
- c. environmental improvement (such as forest enhancement, riparian enhancement, and aspen stand enhancement);
- d. burned area rehabilitation;
- e. hazard tree removal;
- f. site preparation that involves disturbance of soil, burning of vegetation, or herbicide/pesticide application; or
- g. cutting or removal of trees and vegetation, together with all the work incidental thereto, including, but not limited to, construction, reconstruction, maintenance and decommissioning of roads, fuel breaks, stream crossings, landings, skid trails, or beds for the falling of trees;
- h. prescribed burning.

Vegetation management activities do not include aquatic vegetation management, preparatory tree marking, surveying, or road flagging.

- M. 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.
- N. Water Board staff has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and state guidelines, and the Water Board has considered the Negative Declaration and 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.
- O. The Water Board held a hearing on December 11, 2008 in South Lake Tahoe and considered all evidence concerning this matter.

THEREFORE BE IT RESOLVED:

WAIVER AND CONDITIONS

1. The Water Board waives the filing of a report of waste discharge and/or waste discharge requirements for all vegetation management activities and discharges

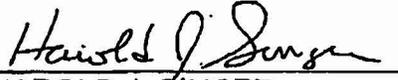
(except for those projects identified in paragraph 2 below) in the areas of the mutual jurisdiction of the TRPA and the Water Board if these activities are regulated by the TRPA.

2. The Water Board does not waive the filing of a report of waste discharge and waste discharge requirements for vegetation management activities with impacts that cannot be mitigated to less than significant levels. Such impacts are those identified in a California Environmental Quality Act environmental impact report, or a National Environmental Policy Act or TRPA environmental impact statement. Activities that cause such impacts were not considered in the Negative Declaration that the Water Board prepared as part of this action. Therefore, this waiver is not applicable to these activities unless a regulatory agency imposes conditions or requirements such that the impacts are mitigated to less than significant levels.
3. While very unlikely, some components of projects covered by this waiver of waste discharge requirements may be subject to regulation under Clean Water Act section 404 or any other federal permit or subject to a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act as a silvicultural point source as defined in 40 Code of Federal Regulations (CFR) section 122.27. This waiver is not a substitute for state water quality certification under section 401 of the federal Clean Water Act which is needed if a federal Clean Water Act section 404 is needed. Additionally, this waiver is not a substitute for an NPDES permit, should one be needed.
4. This waiver requires compliance with the Lahontan Basin Plan, TRPA's Regional Plan, and prohibits the creation of a pollution or nuisance.
5. This action waiving the filing of a report of waste discharge and waste discharge requirements is conditional as outlined in paragraphs 1 through 4, above, and the Executive Officer can recommend the Water Board adopt waste discharge requirements for any of the specific types of vegetation management activities or discharges, or any individual vegetation management activity or discharge, identified in *Finding L* above.

MOU AUTHORIZATION AND NEGATIVE DECLARATION CERTIFICATION

6. The Water Board authorizes and directs the Executive Officer to enter into a Memorandum of Understanding with the TRPA which describes the relationship between the Water Board and TRPA related to regulation projects subject to the waiver in paragraph 1 above. The Executive Officer is authorized to approve non-substantive changes in the MOU.
7. The Water Board certifies the Negative Declaration for this waiver and directs the Executive Officer to file all appropriate notices.

I, Harold J. Singer, 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 December 11, 2008.



HAROLD J. SINGER
EXECUTIVE OFFICER