



California Regional Water Quality Control Board

Lahontan Region



Linda S. Adams
Secretary of
Environmental Protection

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Arnold Schwarzenegger
Governor

MINUTES

March 12-13, 2008

Regular Meeting

Tahoe-Truckee Sanitation Agency
Board Room
13720 Joerger Drive
Truckee, CA 96161

Mr. Clarke, Chair, called the meeting to order at 3:30 p.m. on March 12, 2008.

Board Members Present

Jack Clarke, Apple Valley
Mike Dispenza, Palmdale
Keith Dyas, Rosamond
Amy Horne, Ph.D., Truckee
Eric Sandel, Truckee
Susan Van Dam, Barstow

Board Member Absent

None

Legal Counsel

David Coupe, State Water Resources Control Board
Jorge Leon, State Water Resources Control Board

Staff Present

Harold Singer, Executive Officer	Chein Kao, Senior WRCE
Bob Dodds, Assistant Executive Officer	Bob Larsen, Environmental Scientist
Lauri Kemper, Supervising WRCE	Alan Miller, Senior WRCE
Laurie Applegate, Executive Assistant	Hannah Schembri, WRCE
Richard Booth, Senior Eng. Geologist	Eric Shay, Staff Services Analyst
Robert Erlich, Environmental Scientist	Doug Smith, Senior Eng. Geologist
Scott Ferguson, Senior WRCE	Dan Sussman, Environmental Scientist
Mary Fiore-Wagner, Environmental Scientist	Robert Tucker, WRCE
Tom Gavigan, Eng. Geologist	Tobi Tyler, WRCE

Addressing the Board

Lisa Wallace, Truckee Watershed Council
Jim Phelan
Ernie Claudio, South Tahoe Citizens Alliance
Everd McCain, Belfast Ranch

California Environmental Protection Agency

Recycled Paper



OTHER BUSINESS

1. Executive Officer's Report

Mr. Singer discussed items from the March written report. Mr. Singer also discussed an Associated Press article about pharmaceuticals in the water supply and gave an update regarding the State Water Board's enforcement policy.

Mr. Singer noted two regional boards have delegated authority to their Executive Officers to accept administrative civil liability complaint settlements below certain monetary thresholds. Mr. Singer described the public notification and comment process and noted he could bring the matter to the Board at a future meeting if the Board was interested in considering a similar delegation.

Mr. Singer noted the work of the Tahoe Fire Commission is coming to a close. A final draft document will be posted on the Commission's website on March 14 and will be considered by the full Commission on March 21.

2. Reports by Chair and Board Members

Dr. Horne gave a report regarding the Vegetation Management Workshop for the Tahoe Basin.

3. CLOSED SESSION

The Board met in closed session from 4:35 p.m. to 5:09 p.m. to discuss Items 3h and 3j. The Board reconvened in open session at 5:09 p.m.

The Board recessed for dinner at 5:10 p.m.

Regular Meeting, continued **7:00 p.m., March 12, 2008**

Mr. Clarke, Chair, called the meeting to order at 7:10 p.m.

Board members present: Jack Clarke, Mike Dispenza, Keith Dyas, Amy Horne, Eric Sandel and Susan J. Van Dam. Board members absent: none.

4. PUBLIC FORUM

No one addressed the Board during the Public Forum.



5. MINUTES**Minutes of the Regular Meeting of February 13-14, 2008 in Victorville**

Dr. Horne suggested a minor change to page 8 of the minutes.

- **Motion:** Moved by Mr. Dispenza, seconded by Mr. Dyas and **unanimously carried** to adopt the minutes as amended by Dr. Horne.

REVISED WASTE DISCHARGE REQUIREMENTS**6. Mono County Waste Systems Divisions, Benton Class III Landfill, Mono County**

Richard Booth discussed the changes outlined in the late revision sheet and responded to comments submitted by Evan Nikirk, Mono County Department of Public Works.

- **Motion:** Moved by Dr. Horne, seconded by Mr. Sandel and **unanimously carried** to adopt the revised waste discharge requirements with the changes in the late revision sheet.

ENFORCEMENT**7. *Public Hearing* – Consideration of a Rescission of Cease and Desist Order No. 6-88-14 for the South Tahoe Public Utility District**

Mr. Clarke opened the public hearing. There being no one wishing to present evidence or testimony, Mr. Clarke closed the public hearing.

- **Motion:** Moved by Mr. Dyas, and seconded by Mr. Dispenza to adopt the Order as proposed rescinding Cease and Desist Order No. 6-88-14. Following a roll call vote, the **motion carried 6-0.**

OTHER BUSINESS**8. Resolution Approving a Request by the Friends of Squaw Creek and the Truckee River Watershed Council for Funds from the Red Dog Diesel Spill Mitigation Fund for Squaw Creek Restoration Planning, Olympic Valley, Placer County**

Tom Gavigan gave the staff report and recommended the Board adopt the Resolution as proposed contributing \$20,000 to the Friends of Squaw Creek and the Truckee River Watershed Council for Squaw Creek restoration planning.

Addressing the Board: Lisa Wallace, Executive Director, Truckee River Watershed Council.



- **Motion:** Moved by Dr. Horne, seconded by Mr. Dispenza and **unanimously carried** to adopt the Resolution as proposed.

9. **Resolution for the Tahoe City Marina Expansion and Dredging Project, Exemption to a Waste Discharge Prohibition Contained in the Water Quality Control Plan for the Lahontan Region, Placer County**

Tobi Tyler gave the staff presentation. Ms. Tyler handed out a March 5, 2008 letter from the League to Save Lake Tahoe and discussed comments received and changes recommended by staff in the late revision sheet. Ms. Tyler recommended the Board adopt the Resolution with the late revisions.

Mr. Singer and Mr. Coupe answered questions from the Board regarding project monitoring.

Jim Phelan, project proponent, noted he was willing to take on the responsibility to ensure a clean project.

- **Motion:** Moved by Mr. Sandel, seconded by Mrs. Van Dam and **unanimously carried** to adopt the Resolution with the changes in the late revision sheet.

10. **Update on the Development of the Lake Tahoe Total Maximum Daily Load Allocation Strategies**

Bob Larsen gave the staff presentation and answered questions from the Board.

Addressing the Board: Jim Phelan; and Ernie Claudio, South Tahoe Citizens' Alliance.

Lauri Kemper and Alan Miller answered questions regarding Caltrans filtration systems.

Doug Smith discussed the scope of the TMDL effort and answered questions from the Board.

In response to a question from Mr. Singer, Board members concurred with the direction outlined in Slide 32 of Mr. Larsen's presentation.

11. **Resolution Authorizing the Executive Officer to Sign the Record of Decision for Abandoned Landfill and Southern Sites Area, Sierra Army Depot, Lassen County**

This item was removed from the agenda for consideration at a future meeting.

The Board meeting recessed at 8:50 p.m.



Regular Meeting, continued
8:30 a.m., March 13, 2008

Mr. Clarke, Chair, called the meeting to order at 8:30 a.m.

Board members present: Jack Clarke, Mike Dispenza, Keith Dyas, Amy Horne, Eric Sandel and Susan J. Van Dam. Board members absent: none.

Mr. Clarke noted that he appointed Dr. Horne and Mr. Sandel to serve as a subcommittee of the Board to work on issues related to the Fire Commission's report.

12. PUBLIC FORUM

No one addressed the Board during the Public Forum.

ENFORCEMENT ACTION

- 13. *Public Hearing* – Consideration of an Administrative Civil Liability Order for Everd A. McCain, B.J. Deis, and McCain and Associates for Violations of (1) Waste Discharge Prohibitions Specified by the Water Quality Control Plan for the Lahontan Region, (2) California Water Code Section 13267, (3) Clean Water Act 301, (4) California Water Code 13304, and (5) Clean Water Act Section 401 Water Quality Certification – Belfast Ranch – Skeet Dam and Buz Dam, Lassen County**

Note: This item was recorded by an electronic reporter. For a transcript, contact Peters Shorthand Reporting Service, 3336 Bradshaw Road, Suite 240, Sacramento, CA 95827 (916) 362-2345.

Mr. Clarke, Chair, opened the public hearing and administered the oath.

Testimony by Lahontan Water Board Prosecution Team

Mary Fiore-Wagner gave the prosecution team's presentation and recommended the Board adopt the ACL Order as proposed (handout – copy of PowerPoint presentation).

Jorge Leon, attorney representing the prosecution team, discussed the purpose of the State Water Board's Office of Enforcement and discussed information pertaining to "An Act of God" defense.



Testimony by Everd A. McCain, B.J. Deis, and McCain and Associates

Everd A. McCain, president of B.J. Deis Corporation and McCain and Associates, noted he would not produce any additional evidence at this time and reserved the remainder of his time for closing arguments.

Mr. McCain answered questions from the Board.

Mr. Leon noted that Mr. McCain was reserving his comment opportunity for closing arguments and stated that if Mr. McCain's closing arguments contained new facts, he might ask for an opportunity to cross examine Mr. McCain.

Cross-examination by Lahontan Water Board Prosecution Team

None.

Cross-examination by Everd A. McCain, B.J. Deis, and McCain and Associates

None.

Mr. Singer questioned members of the prosecution team. Mr. Dispenza questioned Mr. Leon.

Comments by Interested Persons

None.

Rebuttal by Lahontan Water Board Prosecution Team

None.

Rebuttal by Everd A. McCain, B.J. Deis, and McCain and Associates

None.

Closing Statement by Everd A. McCain, B.J. Deis, and McCain and Associates

Mr. McCain gave his closing statement. He commented that the situation was caused by a misunderstanding of the change in regulations and an act of God. Mr. McCain asked the Board to consider allowing him to make annual installment payments on a reduced civil liability fine of \$50,000. He commented that such an arrangement would allow him to remain in business and continue the environmental efforts that still need to be done for the stabilization work to be permanent.



Note: Following a short break, Mr. Clarke noted that Mr. McCain's closing statement was more like a presentation. Mr. Clarke gave the prosecution team time for cross-examination of Mr. McCain.

Cross-Examination by Lahontan Water Board Prosecution Team

Mr. Leon commented that upon listening to Mr. McCain's presentation, the prosecution team observed that Mr. McCain was reading from a prepared written statement containing new information not previously heard by the prosecution team. Mr. Leon stated that the prosecution team was therefore not prepared to counter, nor did he believe cross examination of Mr. McCain would be productive. Mr. Leon objected to the receipt of any new factual content contained in Mr. McCain's statement that was described as a closing statement.

Mr. Leon, Mr. Ferguson and Mr. Dodds answered questions from the Board.

Additional Statement by Mr. McCain and Questions from the Board and Mr. Singer

Mr. Clarke asked Mr. McCain if he had anything further to state. Mr. McCain gave an additional statement and answered questions from the Board and from Mr. Singer.

David Coupe response to objection made by Jorge Leon

Mr. Coupe indicated that Mr. McCain's closing statement resembled a presentation as opposed to a closing statement. Mr. Coupe commented that it was difficult to discern what constituted new facts injected as part of the hearing versus what was a summary of the evidence presented at the hearing or rebuttal testimony to the written rebuttal provided by the prosecution team. Mr. Coupe suggested that the objection be sustained to the extent that no new facts would be allowed that went outside the scope of the evidence that was presented as part of the written submittal or through the testimony presented today and anything outside the scope of what Mr. McCain was entitled to present as part of any rebuttal to the prosecution team's written rebuttal.

Board Discussion of Mr. Leon's Objection and Chair's Ruling

Board members voiced concern regarding Mr. Coupe's suggestion to sustain Mr. Leon's objection. Mr. Clarke stated that he didn't pick out anything he could identify as new evidence from Mr. McCain's statement and felt sustaining the objection would create confusion. Mr. Leon agreed that it would be difficult to sort out what Mr. McCain presented previously with what was stated in the hearing without a side-by-side comparison and noted that might not be possible until a petition has been filed. Mr. Leon asked Mr. Clarke to note his objection



for the record. Mr. Clarke noted Mr. Leon's objection for the record. Mr. Clarke overruled the objection.

Rebuttal by Lahontan Water Board Prosecution Team

Mary Fiore-Wagner provided rebuttal and answered questions from the Board. Scott Ferguson answered a question from the Board.

Rebuttal by Everd A. McCain, B.J. Deis, and McCain and Associates

Everd McCain provided rebuttal.

Closing Statement by Everd A. McCain, B.J. Deis, and McCain and Associates

None.

Closing Statement by Lahontan Water Board Prosecution Team

Jorge Leon gave the closing statement and recommended the Board adopt the Administrative Civil Liability Order for \$100,000.

Mr. Leon outlined what would be in the administrative record should the Board's action be petitioned to the State Water Board.

There being no further testimony, Mr. Clarke closed the public hearing.

Note: The Board met in closed session from 11:05 a.m. to 11:35 a.m. to discuss Item 3i. The Board reconvened in open session at 11:36 a.m. for the continuation of Item 13.

Mr. Clarke noted the seriousness of the issue before the Board and stated that the Board could fine Mr. McCain more than \$100,000. He also commented that the Board's main goal was compliance and that the Board wanted the parties to work together.

- **Motion:** Moved by Dr. Horne and seconded by Mr. Dyas to continue the hearing to allow the designated parties an opportunity to try to reach a structured settlement composed of several elements. First and foremost, a plan to stabilize the site. Second, a schedule or proposal for either rebuilding the dam or removing the material that's now in the waters of the United States or the riparian zone, whatever the appropriate term is. If the dam is rebuilt, there will be third party oversight of the design of the dam. The settlement will hold Mr. McCain accountable for meeting his reporting requirements and will include an imposed penalty of some cash value. We would like the settlement proposal to be brought back to the Board the second meeting from this one that is held in the north, so either four or



five months from now. If you can bring it back more quickly, that's great, but we have a firm deadline out. We want to hear back in the second meeting from this one as to whether you can reach a settlement. Finally, if you are not able to reach a settlement by that meeting, the second one from now in the north, we will deliberate on the evidence that was presented today and reach a decision.

Mr. Coupe asked if the Board desired to amend the motion to add that the Board directed the advisory team to work with the designated parties as part of developing the proposed settlement.

- **Amended motion:** Dr. Horne amended the motion to direct the advisory team to work with the designated parties. Mr. Dyas seconded the amendment to the motion.

Mr. Leon noted the Board continued the hearing and asked if the record would stay open in the matter.

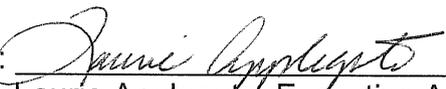
Mr. Coupe stated that the record would not stay open. Mr. Clarke added that all testimony had been completed.

Mr. Leon noted that by closing the record, the Board allowed the prosecution team to work directly with the advisory team and avoid ex parte communication.

- **Motion as amended unanimously carried.**

ADJOURNMENT

With no further business to come before the Board, the meeting adjourned at 11:40 a.m. on March 13, 2008.

Prepared by:  Adopted: April 9, 2008
Laurie Applegate, Executive Assistant

