

ENCLOSURE 3

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION R6T-2010-PROPOSED

**APPROVAL OF AMENDMENTS TO THE WATER QUALITY CONTROL PLAN
FOR THE LAHONTAN REGION TO INCORPORATE A TOTAL MAXIMUM
DAILY LOAD (TMDL) AND TMDL IMPLEMENTATION PLAN
FOR FINE SEDIMENT PARTICLES, TOTAL NITROGEN, AND TOTAL
PHOSPHORUS FOR LAKE TAHOE,
EL DORADO AND PLACER COUNTIES,
AND CERTIFICATION OF SUBSTITUTE ENVIRONMENTAL
DOCUMENTATION**

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

1. The proposed amendments to the Water Quality Control Plan were developed in accordance with Water Code section 13240 et seq.
2. Section 303(d) of the federal Clean Water Act requires states to identify surface waters that do not meet water quality standards, to prepare strategies called Total Maximum Daily Loads (TMDLs) incorporating load and/or wasteload allocations to ensure attainment of standards in these waters, and to incorporate those allocations into their water quality control plans.
3. Lake Tahoe was placed on the Section 303(d) list of water bodies requiring TMDLs in 1988 due to ongoing loss of the lake's historic deep water transparency.
4. The Lake Tahoe TMDL Report was developed collaboratively with the state of Nevada's Division of Environmental Protection, and the Water Board anticipates the state of Nevada will adopt a TMDL for fine sediment particles, total nitrogen, and total phosphorus for the Nevada portion of the Lake Tahoe basin.
5. Water Board staff's analysis, presented in the Lake Tahoe TMDL Report, indicates the deep water transparency decline is due to light scattering by an increase in the number of fine sediment particles in suspension and light adsorption by increased algae production caused by elevated nitrogen and phosphorus loading.

6. Analysis shows that approximately two thirds of the deep water transparency condition is driven by the number of inorganic fine sediment particles less than sixteen micrometers in diameter. Consequently, the Lake Tahoe TMDL effort has focused on the number of fine sediment particles as the primary pollutant causing deep water transparency decline.
7. Lahontan Water Board staff prepared draft Basin Plan amendments incorporating a TMDL to address the major sources of sediment particle, total nitrogen, and total phosphorus loading to Lake Tahoe. The proposed amendments will add a Lake Tahoe TMDL section to the Basin Plan that includes a Problem Statement, Numeric Targets, Source Analysis, Sediment Loading Capacity and Allocations, a Margin of Safety, and an Implementation and Monitoring Plan.
8. The Lahontan Water Board has determined that the TMDL for fine sediment particles, total phosphorus, and total nitrogen for Lake Tahoe are set at levels necessary to attain and maintain the applicable water quality objectives taking into account seasonal variations and inherent uncertainties in the TMDL analysis.
9. The Implementation Plan requires land managers in the Lake Tahoe watershed to implement and maintain management practices to reduce fine sediment particle and nutrient discharges to Lake Tahoe.
10. The Lake Tahoe TMDL analysis identifies urban stormwater runoff as the largest source of fine sediment particles discharged to Lake Tahoe. As such, Lake Tahoe municipalities and state highway departments have a unique responsibility to reduce pollutant loads.
11. Pursuant to Health and Safety Code section 57004, the proposed amendments include changes in response to comments by independent scientific peer reviewers on an earlier draft and supporting technical documents. The record includes a response to all peer review comments.
12. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) requirements for preparing environmental documents. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 3782.) As such, the Lahontan Water Board's basin planning documents together with an environmental assessment, including an Environmental Checklist, are the "substitute documentation" that contain the required environmental documentation under CEQA. (Cal. Code Regs., tit. 23, § 3777.) The Substitute Environmental Documentation for this project includes the proposed amendments, responses prepared by staff to address comments

raised during the development of the TMDL, the Lake Tahoe TMDL Report, and this resolution. The project itself is the establishment of a TMDL for fine sediment particles, total nitrogen, and total phosphorus for Lake Tahoe. While the Lahontan Water Board has no discretion to not establish a TMDL (the TMDL is required by federal law), the Lahontan Water Board does exercise discretion in assigning waste load allocations and load allocations, determining the program of implementation, and setting various milestones in achieving the narrative water quality objectives and protecting the beneficial uses.

13. The 65-year implementation period described in the TMDL will allow implementing agencies to pursue a variety of compliance approaches. In conjunction with approval of the proposed TMDL, the State Water Board will also seek USEPA approval of the 65 year staged implementation under 40 CFR 131.13, which allows USEPA to approve state policies generally affecting the applications and implementation of water quality standards.
14. In preparing the accompanying CEQA substitute environmental documentation, the Lahontan Water Board has considered the requirements of Public Resources Code section 21159 and California Code of Regulations, title 14, section 15187, and intends the substitute documents to serve as a tier 1 environmental review. Nearly all of the compliance obligations will be undertaken either by public agencies that will have their own obligations under CEQA or by landowners that must seek permits from public agencies that have CEQA obligations. Project level impacts will need to be considered in any subsequent environmental analysis performed by other public agencies, pursuant to Public Resources Code section 21159.2.
15. Two CEQA Scoping hearings were conducted on July 15 and July 17, 2008, one in South Lake Tahoe and one in North Lake Tahoe. A notice of the CEQA Scoping hearings was sent to interested parties including implementation agencies, counties, and conservation groups within the Lake Tahoe watershed. A Supplemental Scoping hearing was held on August 12, 2009 in South Lake Tahoe.
16. A Notice of Filing, a written TMDL staff report, a CEQA environmental checklist, and the draft basin plan amendment were prepared and distributed to interested individuals and public agencies for review and comment in accordance with state environmental regulations (California Code of Regulations, title 23, section 3775 et seq.) and federal Clean Water Act regulations, 40 Code of Federal Regulations Part 25 and 40 Code of Federal Regulations (CFR) Part 131.
17. The Lahontan Water Board heard and considered all written public comments and all testimony presented at a duly noticed public hearings held at its regular meetings on September 8, 2010 and November 16, 2010.

18. The Lahontan Water Board considered costs of implementing measures to achieve the TMDL. The costs to implement the TMDL will be incurred by identified implementing agencies. These costs have been deemed reasonable relative to the water quality benefits to be derived from implementing the TMDL.
19. The record as whole, including the TMDL staff report and environmental document, indicates that this order is consistent with the provisions of the State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California" and 40 CFR Section 131.12. The TMDL will result in improved water quality and will maintain the level of water quality necessary to protect existing and anticipated beneficial uses.
20. The environmental documentation, when considered together with the record of the public review process as a whole, indicates that adoption of the proposed amendments to the Water Quality Control Plan for the Lahontan Region will have no significant adverse impacts, either individually or cumulatively, on the environment.
21. The environmental documentation, when considered together with the record of the public review process as a whole, also indicates that the adoption of the proposed amendments will have no environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.
22. The Lahontan Water Board finds that the analysis contained in the Lake Tahoe TMDL Report, the substitute environmental documentation, the CEQA Checklist and the responses to public and peer review comments comply with the requirements of the State Water Board's certified regulatory CEQA process, as set forth in California Code of Regulations title 23, section 3775 et seq. Furthermore, the Lahontan Water Board finds that the analysis fulfills the Lahontan Water Board's obligations attendant with the adoption of regulations "requiring the installation of pollution control equipment, or a performance standard or treatment requirement," as set forth in Public Resources Code section 21159.
23. The proposed amendments meet the necessity standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b), and were developed in accordance with Water Code section 13240, et seq.

THEREFORE BE IT RESOLVED THAT:

1. The substitute environmental documentation prepared by Lahontan Water Board staff pursuant to Public Resources Code Section 21080.5 reflects the independent judgment of the Lahontan Water Board. This environmental document is hereby certified.
2. The Lahontan Water Board adopts the amendments to the *Water Quality Control Plan for the Lahontan Region* to incorporate a TMDL for fine sediment particles, total nitrogen, and total phosphorus and TMDL implementation program for the Lake Tahoe watershed.
3. The Executive Officer is directed to forward copies of the Basin Plan amendments and the administrative record to the State Water Board in accordance with the requirements of section 13245 of the Water Code.
4. The Lahontan Water Board requests that the State Water Board approve the Basin Plan amendments in accordance with the requirements of sections 13245 and 13246 of the Water Code and forward them to the California Office of Administrative Law (OAL) and the U.S. Environmental Protection Agency for approval.
5. Following approval of the Basin Plan amendments by the State Water Board and OAL, the Executive Officer shall file a Notice of Decision with the Resources Agency. The record of the final substitute environmental documentation shall be retained at the Lahontan Water Board's office at 2501 Lake Tahoe Boulevard, South Lake Tahoe, California, in the custody of the Lahontan Water Board's administrative staff.
6. If, during its approval process, Lahontan Water Board staff, State Water Board or OAL determines that minor, non-substantive changes to the language of the amendment or policy are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Lahontan Water Board of any such changes.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on November 16, 2010.

HAROLD J. SINGER
EXECUTIVE OFFICER