



Sierra Forest Legacy
Protecting Sierra Nevada Forests and Communities



League to Save Lake Tahoe

California Regional Water Quality Control Board,
Lahontan Region
Attn: Andrea Stanley
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

February 9, 2009

Dear Ms. Stanley:

We submit the following comments on behalf of the Sierra Forest Legacy, the Tahoe Group of the Sierra Club and the League to Save Lake Tahoe. We would like to thank the Lahontan Water Board (hereafter "Lahontan") for the opportunity to provide comments on the Draft proposed Region-wide Timber Waiver ("Waiver"). We agree that there is a need to better streamline the permitting process for fuels reduction projects and appreciate Lahontan's efforts to improve its Regional Timber Waiver. However, as discussed in previous letters and meetings with staff, we have concerns that the proposed changes to existing law portend a substantially reduced role for Lahontan in protecting water quality within its region. As stated in our 12/5/08 letter on the working draft, we expect Lahontan to complete a comprehensive environmental review for these proposed changes, as required by the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.* As discussed further in this letter, the documentation provided with the proposed Waiver fails to perform this review as it relates to the entire Lahontan Region, and specifically the Lake Tahoe Basin, which as a designated Outstanding National Resource Water (ONRW), affords special protection.

However, we do not believe that including the necessary information will require a significant investment of time and resources by Lahontan staff. Rather, according to recent discussions with staff, much of the information we expect appears to be available and/or known to Lahontan staff and simply needs to be included in the proposed waiver and/or environmental analysis so the public is provided with the same information Lahontan used to inform proposed changes. In other areas, proposed changes are not supported by adequate scientific evidence; in these cases, we recommend that other Categories and/or regulations available in the proposed waiver (for example, regulations for demonstration projects) allow for fuels reduction projects which are eligible for the Waiver to proceed but to be done in a way which prevents significant impacts while providing important scientific information that can be used to guide the development of future projects.

We remain hopeful that Lahontan will take responsible action that ensures the improvement in water quality and other beneficial uses that Lahontan is charged to protect under California law while still allowing for necessary fuel reduction activities to occur.

Jennifer Quashnick,
Tahoe Area Sierra Club

Carl Young
League to Save Lake Tahoe

Michael Graf
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Demonstration Projects:

Demonstration Projects were the subject of extensive discussion during the Tahoe Fire Commission process and vegetation management workshops. There has been a general recognition by all parties involved that more data is needed regarding the environmental impacts of fuels reduction activities and possible mitigation measures, especially in sensitive environments like stream environment zones and on steep slopes. However, because it is important to implement fuels reduction projects in a timely manner, efforts have focused on developing ways to complete projects without causing significant environmental impacts while gathering the data necessary to meet the following objectives:

- 1) Answer remaining research questions regarding the impacts of various methods;
- 2) Evaluate the efficacy of BMPs/mitigation measures; and
- 3) Prevent significant impacts through adapting project activities when data indicate impacts are occurring.

As a result, recent workshops and scientific reports have focused on implementing fuels reduction projects with consistent monitoring methods to answer remaining research questions.

Once a demonstration project has proven a method and/or BMP is effective at preventing significant impacts, this information can be used to guide future projects without the additional monitoring requirements. For example, the Heavenly Creek SEZ project demonstrated that the impacts of the cut-to-length harvester, *as used in those specific conditions*, were less than significant. Thus, these methods have been proven acceptable for use in future projects with comparable conditions and the additional monitoring requirements associated with demonstration projects would not be needed.

Lahontan should incorporate a section into the Waiver, where appropriate, which addresses demonstration projects. In fact, we heard project implementers express the same request during the public workshops held in November. As discussed with Lahontan staff during our 2/4/09 meeting, we request that language be added to Category 6 to recognize that demonstration projects may proceed with Executive Officer approval of the approach (additionally, the Waiver should reiterate General Provision 4 as well). The Waiver must clearly define what a demonstration project is. In addition to implementation, effectiveness and forensic monitoring (required for other Category 4 and 6 projects), all demonstration projects will require quantitative monitoring of impacts to soils, vegetation recovery, infiltration rate, etc. Monitoring protocols will be approved on a case-by-case basis and will be required prior to the start of the project, during the project, immediately after completion and following the winter after a project has been completed.

Once a demonstration project has shown that activities can be successfully mitigated and/or a given BMP is effective in appropriate situations, then such activities/BMPs can be used in other projects eligible for the Timber Waiver under comparable conditions.

Pile Burning in Sensitive Waterbody Buffer Zones

As discussed at our 2/4/09 meeting with Lahontan staff, mitigation for pile burning in sensitive Waterbody Buffer Zones (e.g. stream environment zones ([SEZs] in Lake Tahoe Basin) has yet to be proven effective. Fortunately, there are proposed demonstration projects in the planning stages which aim to investigate such mitigation (e.g. Alpine Meadows). However, the proposed Waiver allows pile burning in SEZs when impacts can be mitigated based on the expectation that during the 5 year time frame of the Waiver, new information will be gleaned from such demonstration projects that there will eventually be proven mitigation options. However, because this ‘placeholder’ concept is not clear in the proposed Waiver, we request the Timber Waiver specifically include a requirement that until effective mitigation measures have been determined, pile burning in SEZs should only occur if the project includes a demonstration component incorporating rigorous scientific data collection and analysis that examines the effectiveness of the mitigation measures. Once effective mitigation measures have been proven, future projects in comparable conditions could proceed under the Timber Waiver Category 6, Condition 18 without requiring a demonstration component.

Selection of environmental thresholds of allowable disturbance

As stated in our 12/5/08 comments:

“The proposed Waiver includes significant revisions to the waiver categories, aimed at creating categories associated with environmental impact, rather than land ownership or which entity is implementing a project. The scientific basis for the selected ‘impact’ limits must be provided in the environmental documentation. For example, the working draft (Category 2) proposes to allow equipment up to 10 pounds per square inch (psi) off of existing roads¹ without notification or monitoring. In this example, we expect the environmental documentation to include adequate scientific evidence supporting the selection of the 10 psi limit. The document should also evaluate alternative ‘impact limits’ and their effect on the environment and project implementation and monitoring.”

The proposed Waiver and Initial Study (IS) did not include this evidence. Per CEQA, the public must be provided the same information that Lahontan has used to proposed the new Waiver. Further, a member of the public should be able to view the evidence and understand how Lahontan selected the values it has proposed. Yet based on answers received at our 2/4/09 meeting with Lahontan staff, it appears that several values were chosen based on ‘institutional knowledge’ by Lahontan staff, and the only way for the public to find out this information is to contact Lahontan staff and make specific requests. This is certainly not the type of informational document required by CEQA.

Lahontan must include all evidence, including analyses, comparisons, references to other documents, etc., in the environmental review for the proposed Waiver. The environmental review must assess every impact of the proposed Waiver, the extent of that impact and how it is mitigated or addressed in the proposed Waiver.

Several categories allow equipment in sensitive “Waterbody buffer zones” up to 13 psi. In order to conclude that this ‘limit’ will not result in significant impacts, there must be evidence showing no impact on all soil types that would be encountered by projects in the Lahontan Region. We could not find any such evidence in the IS or associated references.

¹ Except within 25 feet of a water body.

Lahontan staff confirmed that no such evidence exists; the only study of such impacts in SEZs appears to be the Heavenly Creek SEZ project, which only tests equipment on the particular soil types in the project area. In fact, the project documentation recognizes that additional research on other soil types is needed:

“Monitoring should also be conducted where CTL technology is proposed for use on sites that have significantly different site conditions, including steeper slopes, soils with a higher silt-to-clay content, or less pre-existing vegetation cover in the form of grasses and shrubs.”

(Heavenly Creek SEZ Demonstration Project, 2007 Soil Monitoring Report, USDA Forest Service, LTBMU, page 20).²

According to the LTBMU Heavenly Creek Final Report, the USFS intended to work with Lahontan and TRPA to further investigate the use of equipment on other soil types:

“...A procedure will be developed by LTBMU staff for comparing the sensitivity of the Heavenly SEZ site relative to other SEZ sites proposed for future mechanical treatment. The delineation criteria for comparison will incorporate the characteristics of SEZs that make them prone to impacts from mechanical operations, such as connectivity to ground water and surface water, soil type, and slope. The criteria and methodology for comparing SEZ characteristics will be reviewed by staff at the Lahontan Regional Water Quality Control Board and the Tahoe Regional Planning Agency prior to its application...”

Were the criteria and methodology developed and peer reviewed? Is there a scientific report available from the USFS outlining their methods, results and conclusions? It appears that the USFS planned to investigate the use of cut to length equipment on other soil types *prior to its application*, yet no further research was performed. How can Lahontan conclude no significant impact if the impacts are unknown?

In summary, the environmental documentation fails to assess the impacts of allowing equipment up to 13 psi on all soil types in the Lahontan Region, and thus fails to analyze the environmental impacts of the proposed project. The same question exists for the allowance of equipment up to 10 psi found in category 2. Further, the document fails to analyze any alternative ‘limits’.

Lake Tahoe’s designation as Outstanding National Resource Water (ONRW):

We are pleased the proposed Waiver has been developed to include the Lake Tahoe Basin in the event it is not covered by another waiver. Lake Tahoe is a designated ONRW and a world-known National Treasure with a very fragile watershed and ever-decreasing clarity. However, it appears that only two areas within the proposed waiver may afford Lake Tahoe the additional protection it requires, which are provisions in Category 6 (as they reference possible prohibition exemptions) and Attachment O, which identifies additional USFS monitoring provisions for 303(d) water bodies (or those at or above TOC). Where is the analysis of how the Waiver will achieve Lake Tahoe’s more stringent environmental standards on all projects? This analysis must be included and presented clearly in the environmental documentation.

² http://www.fs.fed.us/r5/ltbmu/documents/ecd/2008/Heavenly_Creek_SEZ_Report_Final.pdf

Comparison between existing and proposed Waiver:

The CEQA documentation does not provide an analysis of how monitoring requirements will change throughout the Lahontan Region (including the Tahoe Basin) as a result of the new waiver. In particular there is inadequate analysis of how the Forest Service will monitor projects subject to this waiver. For example:

- The documents fail to provide a clear comparison of the existing versus proposed waiver's regulation of various activities. For example, what are the existing requirements compared to proposed requirements for projects that would fall in the proposed Category 2? Upon what evidence are any regulations (primarily monitoring and reporting requirements) reduced?
- How do the proposed monitoring and reporting requirements specifically compare to the existing "Monitoring and Reporting Program?" A simple tabular representation would help inform the public of the changes being proposed, including examples of typical fuels reduction projects and how they would be covered under the current versus proposed Waiver.

Additional Concerns for the Lake Tahoe Basin:

We remain particularly concerned about this issue given that Lahontan's waiver for the Tahoe Basin is currently before the State Board on review. If the State Board grants our Petition, we do not believe that the current CEQA documents for this regional waiver would constitute an adequate analysis of the issues regarding water quality in the Tahoe Basin.

To the extent Lahontan believes that this waiver would be controlling in the event the State Board were to grant the Petition, it must analyze the effects of reducing the monitoring components of the 2007 waiver as applied to projects in the Tahoe Basin. Accordingly, we hereby incorporate our previous comments, expert declaration and submitted evidence as part of these comments as well.

Other comments:

On page 10 of the proposed waiver, we recommend Lahontan clarify how much 'advance notice' is needed as required in number 7. Notice should provide adequate time for Lahontan to assess impacts of the change.

The existing waiver requires the submission of maps and other project information (page 4, number 8). Lahontan staff explained that this information will remain available under the proposed Waiver, yet not actually *required*.. We request the proposed Waiver/IS discuss what information will be available and where the public can access such information.

On page 12 of the proposed Waiver, we recommend Lahontan add the following (in bold): "... (3) No construction of new landings **or expansion of existing landings.**"

On page 13 and in other areas, the new Waiver limits chipped material in Water zones to 2 inches average and 4 inches maximum. As we stated at the 2/4/09 meeting, the environmental documentation should explain what this limit is based upon and the reason it was selected.

Additionally, the same section, number 7, includes requirements based on a specific forecast. The environmental documentation should explain the basis for the selection of these parameters and include historical weather data showing actual conditions occurring after these forecasts.

As we stated at the 11/14/08 public workshop, Lahontan should review and assess the adequacy and success of the 2007 MRP before making changes to the program. How can Lahontan assess what has been effective and what needs improvement without reviewing how the program has operated since its adoption in February 2007? In the proposed Waiver, several changes are proposed to the monitoring and reporting requirements; we reiterate our request that Lahontan first examine how well existing requirements have performed before proposing such changes.