

**California Regional Water Quality Control Board
Santa Ana Region**

January 23, 2009

Item: 9

Subject: Big Bear Lake Nutrient Total Maximum Daily Load (TMDL) for Dry Hydrological Conditions - Task Force Agreement

DISCUSSION

On April 21, 2006, the California Regional Water Quality Control Board, Santa Ana Region (Regional Water Board), adopted Resolution No. R8-2006-0023, amending the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan). The amendment incorporates into Chapter 5, "Implementation" of the Basin Plan, a nutrient Total Maximum Daily Load (TMDL) for Big Bear Lake for Dry Hydrological Conditions, (hereinafter referred to as the "Big Bear Lake Dry Nutrient TMDL"). The TMDL was approved by the State Water Resources Control Board (State Water Board) on April 3, 2007 (Resolution No. 2007-0013) and the California Office of Administrative Law (OAL) on August 21, 2007. On September 25, 2007, the U.S. Environmental Protection Agency, Region IX, approved the Big Bear Lake Dry Nutrient TMDL. The purpose of the TMDL is to ensure attainment of water quality standards (beneficial uses, water quality objectives and the anti-degradation policy) in Big Bear Lake, which is impaired due to excessive levels of phosphorus¹. As discussed in the Staff Report on the Nutrient TMDLs for Big Bear Lake (June 2005), there were insufficient watershed and in-lake nutrient data to allow development of TMDLs, LAs, and WLAs for average and/or wet hydrological conditions, therefore the TMDL is specific to dry hydrological conditions.

The Big Bear Lake Dry Nutrient TMDL includes specific requirements for the development and implementation of monitoring plans for the watershed and lake, as well as the development and implementation of a lake management plan that includes model updates for Big Bear Lake and the watershed, an in-lake sediment nutrient reduction plan and an aquatic plant management plan. The requirements for the lake and watershed monitoring and lake management plan are the joint responsibility of all dischargers of nutrients.

¹ There is evidence that nitrogen may also be a limiting nutrient under certain circumstances and that control of nitrogen inputs may also be necessary to address beneficial use impairment in Big Bear Lake. To address data and analytical model limitations, the TMDL implementation program requires the collection and evaluation of nitrogen data that will allow evaluation of compliance with the established TIN water quality objective and to support future revision of the TMDL to include nitrogen, if and as necessary.

In order to implement the requirements of the Big Bear Lake Dry Nutrient TMDL, affected agencies and stakeholders have formed a Big Bear Lake TMDL Task Force. The TMDL Task Force is comprised of all dischargers named in the TMDL, including the following: the City of Big Bear Lake, the County of San Bernardino, the California Department of Transportation, the United States Department of Agriculture-Forest Service, San Bernardino County Flood Control District, and Big Bear Mountain Resorts. In addition, the Big Bear Municipal Water District (the agency that manages the lake), the Santa Ana Watershed Project Authority (SAWPA), and the Regional Water Board are also members of the Task Force.

SAWPA will serve as the Task Force Administrator. Pursuant to the Task Force Agreement, both SAWPA and the Regional Water Board would serve as advisory members on the Task Force, with no financial responsibility or voting authority. Board staff have been actively working with stakeholders and the Task Force member agencies since TMDL development activities began in 2000.

By joining the Task Force and signing the agreement, the Board signals its commitment to the Task Force effort and the TMDL implementation process. Staff participation in TMDL implementation activities is appropriate to ensure that efforts to reduce nutrient inputs continue in a manner consistent with the TMDL. It should be emphasized that if the Regional Water Board becomes a member of the Task Force, there would be no financial obligation of the Board to fund TMDL implementation studies or actions. Further, the Regional Water Board is not bound to implement any results or recommendations from the Task Force. The Board's signature would denote commitment to meaningful participation in the TMDL implementation process to ensure that all named dischargers are meeting the requirements of the Big Bear Lake Dry Nutrient TMDL.

STAFF RECOMMENDATION

Staff recommends the adoption of Resolution No. R8-2009-0011, authorizing the Executive Officer to sign the agreement on behalf of the Board. The Task Force agreement is attached to Resolution No. R8-2009-0011. Further, adoption of the Resolution would delegate the Executive Officer all functions under the Agreement, including any future amendments to the Agreement.

**California Regional Water Quality Control Board
Santa Ana Region**

Resolution No. R8-2009-0011

Resolution Authorizing the Signature of the Big Bear Lake Total Maximum Daily Load (TMDL) Task Force Agreement and Delegating Authority to the Executive Officer to Execute all Functions under the Agreement and to Consider Further Proposed Amendments to the Agreement

WHEREAS, the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Water Board) finds that:

1. The Big Bear Lake Nutrient TMDL for Dry Hydrological Conditions (hereinafter referred to as the "Big Bear Lake Dry Nutrient TMDL") was approved by the California Regional Water Quality Control Board, Santa Ana Region (Regional Water Board) on April 21, 2006 (Resolution No. R8-2006-0023); the State Water Resources Control Board (State Water Board) on April 3, 2007 (Resolution No. 2007-0013) and the California Office of Administrative Law (OAL) on August 21, 2007. On September 25, 2007, the U.S. Environmental Protection Agency, Region IX, approved the Big Bear Lake Dry Nutrient TMDL.
2. The City of Big Bear Lake, the County of San Bernardino, the California Department of Transportation, the United States Department of Agriculture - Forest Service, the San Bernardino County Flood Control District, Big Bear Mountain Resorts, the Big Bear Municipal Water District, and the Santa Ana Watershed Project Authority developed an Agreement to form the Big Bear Lake TMDL Task Force.
3. The purpose of the Task Force is to provide technical guidance and input to TMDL Task Force tasks, review and comment on draft and final deliverables and reports, and satisfy the study and reporting requirements described in the Big Bear Lake Dry Nutrient TMDL implementation plan.
4. The Task Force Agreement specifies that the Regional Water Board will participate on the Task Force and serve as a non-voting and non-funding member.
5. The Regional Water Board's representative would fully participate in Task Force meetings, but will have no voting rights except as to further amendments to this Agreement. The Regional Water Board would have no obligation to make any financial contributions, or any financial obligations under this Agreement.
6. Regional Water Board participation as an advisory member of the TMDL Task Force would facilitate timely compliance with the TMDL requirements.

7. It is appropriate to delegate to the Executive Officer authority to execute all functions under the Agreement and any further proposed amendments to the Agreement.
8. The Regional Water Board Executive Officer's signature to the Task Force Agreement neither connotes nor denotes a commitment by the Regional Water Board to implement the results and recommendations of the Task Force studies regarding revisions to the Big Bear Lake Dry Nutrient TMDL or any future TMDLs. Rather, the Executive Officer's signature denotes commitment to meaningful participation in considering revisions to the TMDL, developing appropriate strategies to address the impairment in Big Bear Lake and ensuring that all named dischargers participate in the TMDL implementation process. The Regional Water Board does not relinquish any rights or obligations as a result of its participation on the Task Force.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Executive Officer is authorized to sign the Agreement to form the Big Bear Lake TMDL Task Force in the same form as the document attached to this Resolution. The Executive Officer is authorized to accept and approve non-substantive changes to the Agreement.
2. The Regional Water Board authorizes the Executive Officer to perform all functions under the Agreement and to approve future necessary amendments to the Agreement consistent with this Resolution.

I, Gerard J. Thibeault, 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, Santa Ana Region, on January 23, 2009.

Gerard J. Thibeault
Executive Officer

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION

BY _____

DATE _____

Gerard J. Thibeault
Executive Officer

APPROVED AS TO FORM

By _____

David Rice
Legal Counsel

Attachment To Resolution

R8-2009-0011

FINAL

AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE

THIS AGREEMENT, is made this ____ day of _____, 2008, between the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE (“FOREST SERVICE”), CALIFORNIA DEPARTMENT OF TRANSPORTATION (“CALTRANS”), SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT (“FLOOD CONTROL”), the COUNTY OF SAN BERNARDINO (“COUNTY”), the CITY OF BIG BEAR LAKE (“CITY”), BIG BEAR MUNICIPAL WATER DISTRICT (“WATER DISTRICT”), BIG BEAR MOUNTAIN RESORTS (“RESORTS”), the SANTA ANA REGION REGIONAL WATER QUALITY CONTROL BOARD (“REGIONAL BOARD”), and the SANTA ANA WATERSHED PROJECT AUTHORITY (“SAWPA”). FOREST SERVICE, CALTRANS, COUNTY, FLOOD CONTROL, CITY, WATER DISTRICT, REGIONAL BOARD, RESORTS, and SAWPA are individually and collectively referred to herein as “PARTY” and “PARTIES” respectively.

RECITALS

This Agreement is entered into on the basis of the following factual understandings and intentions of the PARTIES:

A. In 1994, Big Bear Lake (“Lake”) and specific tributaries in the Big Bear Lake watershed were identified as impaired waters on the Clean Water Act Section 303(d) list because of high levels of nutrients, noxious aquatic plants, sedimentation/siltation, and excessive levels of metals, copper and mercury. As a result of the Section 303(d) listing, the Clean Water Act and California’s Nonpoint Source Pollution Control Plan require that total maximum daily loads (TMDLs) be established for Big Bear Lake.

B. In response to the Section 303(d) listing described in Recital A, in 2000 the REGIONAL BOARD, in cooperation with various stakeholders in the watershed, initiated a process to develop TMDLs for the Big Bear Lake watershed, including Big Bear Lake. An initial workgroup was formed by WATER DISTRICT, which included representatives from WATER DISTRICT, REGIONAL BOARD, FLOOD CONTROL, CITY, the Big Bear Area Regional Wastewater Authority, CALTRANS, FOREST SERVICE, and RESORTS.

C. Since 2001, the PARTIES hereto have joined together to improve water quality in Big Bear Lake. Altogether, more than \$12 million has been invested in various remediation projects designed to control nutrient impairments of the Lake. These projects include installing aeration systems, implementing alum treatments, eliminating invasive aquatic weeds, removing excess sediment, stabilizing Lake levels to provide additional habitat, and enhancing the fishery management program. In addition, a comprehensive watershed-wide monitoring program was established to better understand and protect water quality in Big Bear Lake. New flow gauges, weather stations, and stream sampling facilities were built to support more effective source control strategies. State-of-the-art topographic and bathymetric maps were developed to guide future Best Management Practice (“BMP”) implementation efforts. New public education programs were created to reduce man-made pollutant loads to the Lake. The PARTIES hereto believe that on-going federal, state and local efforts are essential to improved water quality conditions for Big Bear Lake.

D. The PARTIES' initial TMDL development efforts focused on nutrients. In 2006, the REGIONAL BOARD adopted a Nutrient TMDL for Dry Hydrological Conditions for Big Bear Lake (Resolution No. R8-2006-0023 with Attachment, dated April 21, 2006) (hereinafter referred to as the "Dry Nutrient TMDL"). Nutrient TMDLs for wet and/or average hydrological conditions, as well as sedimentation/siltation and metals TMDLs for Big Bear Lake and/or specific tributaries may be incorporated into the Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan") at the time any such TMDLs are developed and adopted in accordance with the Clean Water Act and California Porter-Cologne Water Quality Control Act. REGIONAL BOARD Resolution R8-2006-0023 amended the Basin Plan to incorporate the Dry Nutrient TMDL, which became effective on August 21, 2007.

E. The Dry Nutrient TMDL identifies FLOOD CONTROL, COUNTY, CITY, CALTRANS, FOREST SERVICE and the RESORTS among the entities that must comply with certain requirements set forth in the Dry Nutrient TMDL.

F. FLOOD CONTROL serves as the Principal Permittee for the National Pollutant Discharge Elimination System ("NPDES") Municipal Separate Storm Sewer System Permit ("MS4 Permit") issued to San Bernardino County and cities within San Bernardino County by the REGIONAL BOARD. The San Bernardino County MS4 Permit (Board Order No. R8-2002-0012) is subject to revision based on studies and plans developed in compliance with the Dry Nutrient TMDL. The COUNTY and CITY are Co-Permittees to the San Bernardino County MS4 Permit.

G. In the interest of ensuring that the Dry Nutrient TMDL Tasks and Implementation Plan requirements are met, FLOOD CONTROL, as Principal Permittee for its respective NPDES MS4 Permit, and on behalf of its NPDES MS4 Permit Co-Permittees named in the TMDL under Resolution No. R8-2006-0023 (COUNTY and CITY), CALTRANS, WATER DISTRICT, RESORTS, SAWPA, REGIONAL BOARD and the FOREST SERVICE have hereby agreed to enter into this cooperative agreement to form a task force ("TMDL TASK FORCE") to coordinate certain tasks identified in the Dry Nutrient TMDL Implementation Plan.

H. The REGIONAL BOARD and SAWPA are appointed as non-voting, non-funding PARTIES of the TMDL TASK FORCE. As non-voting, non-funding PARTIES, the REGIONAL BOARD and SAWPA are authorized only to make recommendations upon the functioning of the TMDL TASK FORCE in connection with the Dry Nutrient TMDL. The REGIONAL BOARD retains certain regulatory authority over the TMDL TASK FORCE PARTIES to the extent authorized under state and/or federal law and does not relinquish any existing and/or future authority or responsibility as a result of participation in this Agreement.

I. To implement the Dry Nutrient TMDL Task requirements and Implementation Plan through the TMDL TASK FORCE, the REGIONAL BOARD has agreed to work with other TMDL TASK FORCE PARTIES to determine priorities and modified schedules necessary to accommodate the Dry Nutrient TMDL requirements within available and reasonable budgets and to ensure that the Dry Nutrient TMDL Tasks and Implementation Plan requirements are coordinated to the maximum extent practicable with the Storm Water Task Force work.

J. The San Bernardino National Forest is on National Forest System lands under the jurisdiction, custody and control of the FOREST SERVICE. The FOREST SERVICE is subject to limitations in its ability to comply with every provision of this Agreement. These limitations are based upon federal laws and regulations, including, but not limited to, the Federal Clean Water Act, the Federal Antideficiency Act, the principle of sovereign immunity and the holdings of the Supreme Court of the United States, and other binding federal court decisions, as they interpret those sources of federal law. The limitations include, but are not limited to, the availability of federal funding to pay for participation in the TMDL TASK FORCE, and the ability of FOREST SERVICE to participate directly in sampling, research or data gathering activities which are not located on or near National Forest System lands or a point source of water discharge arising on National Forest System lands, or other activities not specifically authorized by the federal Clean Water Act Section 313. By entering into this Agreement, FOREST SERVICE does not authorize any of the PARTIES to exercise regulatory authority over FOREST SERVICE. FOREST SERVICE agrees that state and federal regulatory agencies that are or may become members of the TMDL TASK FORCE under this Agreement have regulatory authority over FOREST SERVICE only to the extent permitted by state and federal law.

NOW, THEREFORE, the PARTIES to this Agreement mutually agree as follows:

SECTION I - Delegation of Responsibilities

A. SAWPA is a non-voting, non-funding PARTY that shall function as the TMDL TASK FORCE Administrator and shall:

- 1) Prepare a formal Task Force Agreement among the PARTIES regarding the Dry Nutrient TMDL.
- 2) Prepare annual budget and associated cost-sharing agreement for the TMDL TASK FORCE PARTIES for agreed upon amounts and prepare semi-annual financial summaries.
- 3) Coordinate scheduling of quarterly TMDL TASK FORCE meetings and prepare minutes summarizing discussions, decisions and action items for each meeting.
- 4) Develop electronic communication system (email list and internet website) to disseminate critical project information to TMDL TASK FORCE PARTIES and the public. Establish library of downloadable electronic documents related to the Big Bear Lake Dry Nutrient TMDL.
- 5) Contract with consultants, as directed and approved by the TMDL TASK FORCE, to prepare and submit water quality monitoring and mitigation plans identified in the Dry Nutrient TMDL Implementation Plan on behalf of the PARTIES to this Agreement. Supervise completion of the required tasks and timely delivery of the mandatory reports to the REGIONAL BOARD on behalf of the PARTIES to this Agreement.
- 6) Identify state and federal grant opportunities and assist the TMDL TASK FORCE in preparing appropriate grant applications (with the assistance of qualified contractors if authorized by the TMDL TASK FORCE).

B. Except for the Forest Service as otherwise provided in this Agreement, the PARTIES shall:

- 1) Jointly participate in the TMDL TASK FORCE, providing technical guidance and input to TMDL TASK FORCE tasks.
- 2) Review and comment on draft and final draft deliverables and reports.
- 3) Provide the TMDL TASK FORCE Administrator with all information needed to satisfy the study and reporting requirements described in the Dry Nutrient TMDL Implementation Plan.
- 4) Provide the TMDL TASK FORCE Administrator with staff support and resources to assist in completing work of the TMDL TASK FORCE, as required and as agreed to by PARTIES.

C. FOREST SERVICE shall comply with the terms and provisions of this Agreement to the extent applicable under federal law. As described in Recital J, above, the FOREST SERVICE is an agency of the federal government and may be unable to participate in each and every aspect of this Agreement to the same extent as other PARTIES.

D. All obligations of CALTRANS under the terms of this AGREEMENT are subject to the appropriation of the resources by the California Legislature and the allocation of resources by the California Transportation Commission. This Agreement has been written before ascertaining the availability of federal or state legislative appropriation of funds for the mutual benefit of the TMDL TASK FORCE PARTIES in order to avoid program and fiscal delays that would occur if this Agreement was executed after those determinations were made. This Agreement is valid and enforceable as to CALTRANS if sufficient funds have been made available to CALTRANS by the United States Government or California State Legislature for the purposes set forth in this Agreement. If the United States Government or the California State Legislature does not appropriate sufficient funds for CALTRANS to participate in this Agreement, this Agreement may be amended in writing by the TMDL TASK FORCE PARTIES to reflect any agreed-upon reduction in the percentage of funds contributed by CALTRANS to continue its participation in this Agreement. CALTRANS, however, has the option to withdraw from this Agreement in the event sufficient funds are not appropriated for CALTRANS. Should CALTRANS exercise its option to withdraw from this Agreement, CALTRANS shall remain responsible for its respective compliance obligations under the Dry Nutrient TMDL and its share of liability, if any, incurred while participating in this Agreement.

E. WATER DISTRICT is not named as a discharger party that must comply with the Dry Nutrient TMDL. However, WATER DISTRICT has voluntarily elected to participate as a PARTY to this Agreement to assist the other PARTIES hereto in implementing portions of the Dry Nutrient TMDL and TMDL Tasks and Implementation Plan requirements. WATER DISTRICT agrees to perform certain tasks required by the Dry Nutrient TMDL on behalf of the other PARTIES to this Agreement, as set forth Exhibit A. Therefore, WATER DISTRICT has a duty to the other PARTIES hereto to complete said tasks in a timely and thorough manner as described in the Dry Nutrient TMDL.

F. REGIONAL BOARD shall:

- 1) Function as a non-voting advisory member without financial obligation to the TMDL TASK FORCE, which may seek REGIONAL BOARD advice, input and support.
- 2) Work with the TMDL TASK FORCE to determine appropriate priorities and schedules for the Dry Nutrient TMDL Implementation Plan tasks based on available resources of the PARTIES hereto and the requirements of the Dry Nutrient TMDL Implementation Plan.

SECTION II – Work of the TMDL TASK FORCE

A. The TMDL TASK FORCE PARTIES shall retain consulting services and provide staff support as necessary to review scientific and other assumptions contained within the Dry Nutrient TMDL, and perform other work as necessary to complete the tasks described below and in accordance with the Dry Nutrient TMDL:

- 1) Develop and Implement Watershed-wide Nutrient Water Quality Monitoring Program. (Dry Nutrient TMDL Task #4.1)
- 2) Develop and Implement Big Bear Lake In-Lake Nutrient Monitoring Program. (Dry Nutrient TMDL Task #4.2)
- 3) Develop Lake Management Plan for Big Bear Lake.
 - a) Big Bear Lake and Watershed Model Updates. (Dry Nutrient TMDL Task #6A)
 - b) Big Bear Lake In-Lake Sediment Nutrient Reduction Plan. (Dry Nutrient TMDL Task #6B)
 - c) Big Bear Lake Aquatic Plant Management Plan. (Dry Nutrient TMDL Task #6C)
- 4) Atmospheric Deposition Determination. (Dry Nutrient TMDL Task #5)

Sub-Tasks Associated with In-Lake and Watershed Monitoring Programs and Lake Management Plan for Big Bear Lake. (Dry Nutrient TMDL Tasks #4.1, 4.2, and 6)

- 5) Develop Sampling Plan (including identifying sampling locations, sampling parameters, sampling schedule, storage and shipping protocols, staff requirements, etc.).
- 6) Develop a Monitoring Plan that meets Surface Water Ambient Monitoring Program requirements.
- 7) Develop Laboratory Support Plan (including identifying qualified labs, coordinating delivery of sample containers and shipping of actual samples, and formal Request For Proposal for services).
- 8) Develop Data Analysis and Reporting System (including electronic database, statistical analysis, tabular and graphic reporting and preparation of reports to REGIONAL BOARD).

Probable Consultant and Contractor Responsibilities: 2009-2015 (Phase 2)

- 9) Implement Watershed-wide Nutrient Water Quality Monitoring Program (Dry Nutrient TMDL Task #4.1, upon approval by REGIONAL BOARD).
- 10) Implement Big Bear Lake In-Lake Nutrient Monitoring Program (Dry Nutrient TMDL Task #4.2, upon approval by REGIONAL BOARD).
- 11) Review, analyze and/or prepare comments on TMDL, Wasteload Allocation and Load Allocations for Wet Weather Conditions and Average Weather Conditions prepared by REGIONAL BOARD (Dry Nutrient TMDL Task #9).
- 12) Review, analyze and/or prepare written recommendations for appropriate revisions to the TMDL targets, Wasteload Allocations and Load Allocations, and monitoring requirements for consideration by REGIONAL BOARD during the formal triennial review (Dry Nutrient TMDL Task #10).
- 13) Review, analyze and/or prepare comments on proposed revision of Big Bear Lake Water Quality Standards (Dry Nutrient TMDL Task #7.1, #7.2, #7.3).
- 14) Estimate natural background nutrient loading to Big Bear Lake as directed by the TMDL TASK FORCE PARTIES.
- 15) Identify and implement appropriate Best Management Practices or other appropriate control strategies to mitigate or remediate nutrient impairments to Big Bear Lake as directed by the TMDL TASK FORCE PARTIES.

B. Any and all work described above in Section II.A and performed by the TMDL TASK FORCE PARTIES in accordance with this Agreement to comply with the Tasks and Implementation Plan requirements of the Dry Nutrient TMDL shall be undertaken solely on behalf of the signatory PARTIES to this Agreement and shall constitute the proprietary work of the PARTIES. The PARTIES hereto understand and agree that any person, entity or party required to comply with provisions of the Dry Nutrient TMDL (including those identified in Recital E, above) that is not a PARTY to this Agreement is deemed not to have participated in the PARTIES' efforts and financial contributions under this Agreement and that any such non-PARTY is required to individually comply with the requirements of the Dry Nutrient TMDL as provided therein.

SECTION III – Budget

A. Each annual BUDGET shall be adopted by a majority vote of voting members of the TMDL Task Force prior to February 1st of each year during which this Agreement remains in force. Each such approved annual BUDGET shall take effect during the next fiscal year following the adoption of that BUDGET, commencing on July 1st of each year and continuing through June 30th of the following year.

B. Each annual BUDGET shall not exceed a total of Five Hundred Thousand Dollars (\$500,000.00), excluding the value of in-kind services and aggregate grant funding, unless a majority of the PARTIES vote to authorize an amount in excess of the \$500,000.00 cap for any one proposed annual BUDGET.

C. The TMDL TASK FORCE Administrator shall prepare and submit a written proposed annual BUDGET for the subsequent fiscal year to the TMDL TASK FORCE and thereafter to the PARTIES prior to November 30th. The proposed BUDGET prepared by the TMDL TASK FORCE Administrator shall include a line-item explanation of proposed expenditures and anticipated costs for the subsequent fiscal year, according to the scope of work developed by the TMDL TASK FORCE for that fiscal year.

D. The TMDL TASK FORCE Administrator shall prepare and submit cost share invoices to each PARTY based on the approved annual BUDGET and the methodology described below in Section IV of this Agreement after July 1st in the fiscal year which the BUDGET takes effect.

E. Except for the FOREST SERVICE, each of the PARTIES shall pay a cost share of each annual budget, based on the TMDL TASK FORCE Administrator's cost share invoice, and which amount and any amount in arrears shall be due and payable to the TMDL TASK FORCE Administrator prior to the date of August 31st in the fiscal year for which it is due.

F. The BUDGET for the fiscal years 2007-2008 and 2008-2009 along with estimates for fiscal year 2009-2010 are attached hereto as "Exhibits A & B" and incorporated herein by this reference. Approval of this Agreement shall constitute approval of the BUDGET for fiscal year 2007-2008 and 2008-09. Except for the FOREST SERVICE, each PARTY shall pay its cost share of the BUDGET for each fiscal year as calculated in SECTION IV of this Agreement, within 30 days of the approval of this Agreement. Cost shares for fiscal year 2007-2008 and 2008-09 are attached hereto as Exhibits "A & B." Estimates for future years' cost shares are attached hereto as shown in Exhibit "B." A proposed annual BUDGET and cost shares for each subsequent fiscal year will be submitted for review and approval by the PARTIES, except for the FOREST SERVICE, by February 1st of each year.

G. The TMDL TASK FORCE Administrator shall minimize carry-over fund balances to those necessary to complete work of the TMDL TASK FORCE and shall limit contingencies to those necessary to ensure work of the TMDL TASK FORCE is not impeded. Excess not necessary to complete budgeted work of the TMDL TASK FORCE or maintain adequate reserves shall be credited back to the PARTIES in the BUDGET consistent with the cost share methodology described in SECTION IV below within 60 days after the accounting provided. The PARTIES agree to establish a reasonable reserve balance as part of each year's BUDGET.

H. After September 30th of each year, the TMDL TASK FORCE Administrator shall provide an accounting of all cost shares collected via cash or in-kind contributions per SECTION IV below. If cost shares collected are less than BUDGET, the TMDL TASK FORCE shall meet with REGIONAL BOARD staff to determine appropriate priorities for scheduled TMDL TASK FORCE work and revise the BUDGET based on available funds.

I. To facilitate completion of certain administrative tasks, including submission of mandatory Dry Nutrient TMDL monitoring plans to the REGIONAL BOARD, the PARTIES hereto have agreed to share the one-time cost of developing these plans solely on behalf of the PARTIES to this Agreement equally among themselves. In so doing, the PARTIES agree that this decision does not establish any precedent for how future expenses, including the cost of implementing the monitoring programs or other implementation tasks under the Dry Nutrient TMDL, will be shared.

SECTION IV – Cost Shares

The cost shares to fund the BUDGET shall be calculated as follows:

A. The FOREST SERVICE contribution to the TMDL TASK FORCE shall be limited to collecting monitoring data on National Forest System lands as required by the Dry Nutrient TMDL and providing such data and analysis of that data to the TMDL TASK FORCE. The FOREST SERVICE has the primary responsibility for collecting TMDL monitoring data, as provided herein. (See Exhibit “A” and “B”) FOREST SERVICE participation in collecting TMDL monitoring data is provided as in-kind labor by the FOREST SERVICE, as provided in RECITAL J, above.

B. TMDL TASK FORCE administrative costs and the costs to develop programs, plans and reports in accordance with Section II above and as required by the Dry Nutrient TMDL (see Exhibit “A”) shall be shared by the TMDL TASK FORCE PARTIES, as specified in this Agreement. (see Exhibit “B”)

C. In the event the TMDL TASK FORCE requires the services of a consultant or consultants to prepare manuals, develop programs, or perform studies relevant to the TMDL TASK FORCE work not covered by an annual BUDGET established in accordance with this Agreement, the costs of said consultant services must be approved by a majority vote of the TMDL TASK FORCE PARTIES and cost shares for said services shall be allocated in accordance with SECTIONS III and IV of this Agreement. Each PARTY hereto may provide in-kind services in lieu of payment required by this Agreement; provided, however, the provision of in-kind services by any PARTY hereto must be approved on a case-by-case basis by a majority vote of the TMDL TASK FORCE PARTIES and such approval shall only remain in effect for the fiscal year within which the approval is made. The value of a PARTY’s in-kind services shall be determined by TMDL TASK FORCE Administrator based upon reasonable standards and the approved BUDGET, and must be approved by the TMDL TASK FORCE PARTIES.

SECTION V – Term of the Agreement

This Agreement shall become effective on the date the last PARTY hereto executes the Agreement. The term of the Agreement shall be for five (5) years, subject to the provisions of SECTION VII below. This Agreement may be renewed or extended for an additional term(s) in 5-year increments by written agreement(s) of the PARTIES.

SECTION VI – Additional Parties

Any agency, entity or person may be added as a PARTY to this Agreement by a written amendment signed by all of the current PARTIES and the party being added.

SECTION VII – Withdrawal and Termination

A. Any PARTY may withdraw from this Agreement effective 60 days after giving written notice to TMDL TASK FORCE Administrator. The TMDL TASK FORCE Administrator shall immediately provide copies of such notice to the other PARTIES. The withdrawing PARTY shall be entitled to a refund of any unspent and unencumbered contribution that PARTY has made toward the current, future or preceding BUDGET. The withdrawing PARTY shall be solely responsible for any and all lawfully assessed penalties and any other financial or regulatory obligation or liability as a consequence of that PARTY's withdrawal from the TMDL TASK FORCE. Any withdrawing PARTY that is identified in the Dry Nutrient TMDL and required to comply with any provisions thereof shall remain solely responsible for its compliance obligations in accordance with the Dry Nutrient TMDL and Section VIII below. The cost allocations to the remaining PARTIES will be recalculated in the following BUDGET year.

B. As non-voting, non-funding PARTIES of the TMDL TASK FORCE, the REGIONAL BOARD and SAWPA may withdraw from the TMDL TASK FORCE and this Agreement effective 30 days after giving written notice to the PARTIES. Notwithstanding withdrawal from the TMDL TASK FORCE and Agreement, the REGIONAL BOARD retains regulatory authority with respect to the TASK FORCE PARTIES to the extent authorized by law. Upon a withdraw by SAWPA, the PARTIES agree to appoint by majority vote a new TMDL TASK FORCE Administrator from among the remaining PARTIES to the Agreement.

SECTION VIII – No Joint and Several Liability for Non-compliance with TMDL Requirements

Any PARTY to this Agreement determined by the REGIONAL BOARD or other state or federal authority in accordance with applicable law to have failed to comply with its obligations under the Dry Nutrient TMDL shall be solely liable for any resultant enforcement actions, other administrative or legal proceedings, or related fines and penalties. No new joint or several liability is intended to be created by this Agreement.

SECTION IX – Amendments to this Agreement

This Agreement contains and constitutes the final and entire agreement between the PARTIES with respect to the subject matter provided herein. This Agreement may only be amended in writing signed by all of the PARTIES.

SECTION X – Notices

All notices shall be deemed effective when personally delivered or five (5) days after deposit in the U.S. Mail, postage prepaid. Any notices sent or required to be sent to any PARTY shall be mailed to the following addresses:

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT
Flood Control Engineer
825 East Third Street
San Bernardino, CA 92415

COUNTY OF SAN BERNARDINO
Director of Public Works
325 N. Arrowhead
San Bernardino, CA 92415

UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE
Forest Supervisor
San Bernardino National Forest
602 S. Tippecanoe Avenue
San Bernardino, CA 92408

CALIFORNIA DEPARTMENT OF TRANSPORTATION
464 West Fourth Street, 6th Floor MS1164
San Bernardino, CA 92401

CITY OF BIG BEAR LAKE
Attn: City Manager
P.O. Box 10000
39707 Big Bear Blvd.
Big Bear Lake, CA 92315

BIG BEAR MUNICIPAL WATER DISTRICT
P.O. Box 2863
40524 Lakeview Drive
Big Bear Lake, CA 92315
BIG BEAR MOUNTAIN RESORTS
P.O. BOX 77
BIG BEAR LAKE, CA 92315

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA
REGION
Chief of Inland Planning Section
3737 Main Street, Suite 500
Riverside, CA 92501

SANTA ANA WATERSHED PROJECT AUTHORITY
P.O. Box 7729
Riverside, CA 92513

SECTION XI – Governing Law

This Agreement will be governed and construed in accordance with the laws of the State of California, except as to the FOREST SERVICE to whom federal law is applicable. If any provision or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired and shall be given effect to the fullest extent permitted by law, unless the purpose of this Agreement is frustrated.

SECTION XII – Consent to Waiver or Breach

No term or provision of this Agreement shall be deemed waived and no breach excused, unless a waiver or breach is consented to in writing and signed by the other PARTIES. Consent by the PARTIES to a waiver or breach by any other PARTY shall not constitute consent to any different or subsequent waiver or breach.

SECTION XIII – Execution in Counterparts

This Agreement may be executed and delivered in any number of counterparts or copies (“counterpart”) by the PARTIES hereto. When each PARTY has signed and delivered at least one counterpart to the other PARTIES hereto, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the PARTIES hereto.

SECTION XIV – Deliverables and Third Party Beneficiaries

All work, documents or things produced, including originals prepared by anyone in connection with, or pertaining to, the work under this Agreement, except for communications and documents held confidential according to law, shall become the property in whole and in part of all PARTIES, jointly and severally. No person or entity shall be deemed to be a third party beneficiary to this Agreement and nothing in this Agreement, either express or implied, is intended to confer upon any person or entity, other than the PARTIES hereto, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

SECTION XV – Indemnification

Except for the FOREST SERVICE and the REGIONAL BOARD, each PARTY agrees to indemnify, defend, and hold harmless the remaining PARTIES, including their special districts, officials, agents, officers and employees from and against any and all liabilities, claims, expenses, damages, fines, penalties arising from the negligence of the indemnifying PARTY, its officials, agents, officers, and employees, arising out of this Agreement, including but not limited to attorney’s costs and fees, claims, actions, and causes of action for damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury, or property damage, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of the party or parties being indemnified. Tort liability for federal employees, including employees of the FOREST SERVICE, is expressly authorized and limited by the Federal Tort Claims Act, which will control liability of the FOREST SERVICE, and their employees under the terms of this Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

RECOMMENDED FOR APPROVAL:

By _____

By _____

APPROVED AS TO FORM

ATTEST:

County Counsel

Clerk to the Board

By _____

By _____

Deputy County Counsel

Deputy

(SEAL)

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

COUNTY OF SAN BERNARDINO

RECOMMENDED FOR APPROVAL:

By _____

By _____

APPROVED AS TO FORM

ATTEST:

County Counsel

Clerk to the Board

By _____

By _____

Deputy County Counsel

Deputy

(SEAL)

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

**UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE (SAN BERNARDINO NATIONAL FOREST)**

By _____

Title _____

Date _____

APPROVED AS TO FORM

By _____
Grants and Agreements

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

BIG BEAR MUNICIPAL WATER DISTRICT

RECOMMENDED FOR APPROVAL:

By _____

By _____

APPROVED AS TO FORM

ATTEST:

County Counsel

Clerk to the Board

By _____

By _____

Deputy County Counsel

Deputy

(SEAL)

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

CALIFORNIA DEPARTMENT OF TRANSPORTATION

By _____
Raymond W. Wolfe, Ph.D.
District Director

Date _____

APPROVED AS TO FORM

By _____
Attorney

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

BIG BEAR MOUNTAIN RESORTS

By _____

Title _____

Date _____

APPROVED AS TO FORM

By _____
Attorney

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

CITY OF BIG BEAR LAKE

By _____
Mayor

Date _____

APPROVED AS TO FORM

By _____
City Attorney

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

SANTA ANA WATERSHED PROJECT AUTHORITY

By _____

Title _____

Date _____

APPROVED AS TO FORM
AKLUFU AND WYSOCKI

By _____
DAVID L. WYSOCKI

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement entitled "AGREEMENT TO FORM THE BIG BEAR LAKE TMDL TASK FORCE" as of the day and year first above written.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SANTA ANA REGION

By _____

Title _____

Date _____

APPROVED AS TO FORM

By _____
Attorney

Exhibit A
Program Budget FY 07-08

Program Budget: Big Bear Lake TMDL Task Force

Summary: Big Bear Lake TMDL Task Force TMDL Implementation Budget		Budget 2007-08
	Task Force Administration and Coordination (SAWPA)	\$ 25,000
	Consultant Support at Quarterly Task Force Meetings (Risk Sciences)	\$ 15,000
4.1	Watershed-wide Nutrient Monitoring Plan (TMDL Task #4.1 due 11/30/2007; Risk Sciences)	\$ 25,000
5.0	Atmospheric Deposition Sampling Delivery Cost (TMDL Task #5 due 8/31/2008)	\$ 3,960
Estimated Annual TMDL Implementation Budget		\$ 68,960
	Contingency (15%)	\$ 10,344
TMDL Implementation Budget		\$ 79,304
	Applicable Stakeholder Funded Activities	\$ 137,960
TMDL Implementation Budget		\$ 217,264

Stakeholder Funding Allocation		Budget 2007-08
	California Department of Transportation	\$ 15,861
	San Bernardino County Flood Control District *	\$ 47,582
	Big Bear Mountain Resorts	\$ 15,861
Total Funding Required		\$ 79,304

Stakeholder Funded Activities		Budget 2007-08
4.2	BBMWD funded: Big Bear Lake Nutrient Monitoring Plan (TMDL Task #4.2 due 11/30/2007; Erika Saad)	\$ 15,000
6.0	BBMWD funded: Big Bear Lake - Lake Management Plan (TMDL Task #6 due 8/31/2008; Risk Sciences)	\$ 100,000
5.0	SBCFCD and City of Big Bear Lake funded: Atmospheric Deposition Determination lab analysis (TMDL Task #5 due 8/31/2008; USFS labor only)	\$ 22,960
Total Stakeholder Credits		\$ 137,960

* Share includes contributions from San Bernardino County Flood Control District, as well as, the County of San Bernardino, and the City of Big Bear Lake

Line Item	Task Description	Estimated Cost
1	Watershed-wide Nutrient Monitoring Plan (TMDL Task #4.1 due 11/30/2007; Risk Sciences)	\$25,000
2	Big Bear Lake Nutrient Monitoring Plan (TMDL Task #4.2 due 11/30/2007; Erika Saad))	\$15,000
3	Atmospheric Deposition Determination (TMDL Task #5 due 8/31/2008; USFS, City of Big Bear Lake, SBCFCD)	\$26,920
4	Big Bear Lake - Lake Management Plan (TMDL Task #6 due 8/31/2008; Risk Sciences)	\$100,000
8	Consultant Support at Task Force Meetings (Risk Sciences)	\$15,000
9	Task Force Administration and Coordination (SAWPA)	\$25,000
10	Contingency	\$10,344
TOTAL		\$217,264

Notes:

- Budget for 2007-08 includes only costs associated with general Task Force administration and preparation of mandatory monitoring plans. The current budget does not include cost of implementing the monitoring program. Actual monitoring is expected to begin next fiscal year (July, 2008).

Exhibit B
Program Budget FY 08-09 and Anticipated Expenses FY 09-10

	Tasks	TMDL Req Task	Anticipated Expenses 2008-09	Anticipated Expenses 2009-10
1.0	Task Force Administration and Coordination (SAWPA)		\$ 40,000	\$ 40,000
2.0	Database Management and RWQCB Annual Reports (SAWPA)	#4.1, #4.2	\$ 18,000	\$ 18,000
3.0	Consultant Support at Quarterly Task Force Meetings (Risk Sciences)		\$ 30,000	\$ 30,000
4.0	Watershed-wide Nutrient Monitoring Program (Consultant)	# 4.1	\$ 200,000	\$ 200,000
5.0	Submit documentation to support revision of beneficial use designations and related water quality objectives for pathogen indicator bacteria in Knickerbocker Creek (Risk Sciences)			\$ 19,000
6.0	In-Lake Nutrient Monitoring Program (Funded by Big Bear MWD)	#4.2	\$ -	\$ -
7.0	Atmospheric Deposition Analysis (Funded by U.S. Forest Service)	#5	\$ -	\$ -
	Subtotal		\$ 288,000	\$ 307,000
	Contingency (10%)		\$ 28,800	\$ 30,700
	TMDL Implementation Budget		\$ 316,800	\$ 337,700
	Stakeholder Funding Allocation		Anticipated Allocation 2008-09	Anticipated Allocation 2009-10
	California Department of Transportation		\$ 31,680	\$ 33,770
	San Bernardino County Flood Control District *		\$ 265,120	\$ 283,930
	Big Bear Mountain Resorts		\$ 20,000	\$ 20,000
	Total Funding Required		\$ 316,800	\$ 337,700
	* Share includes contributions from San Bernardino County Flood Control District, as well as, the County of San Bernardino, and the City of Big Bear Lake			
	Stakeholder Funded Activities		Anticipated Activities 2008-09	Anticipated Activities 2009-10
	Big Bear Mountain Resorts (Watershed Sampling & Labor)		\$ 100,000	\$ 100,000
	In-Lake Monitoring (Big Bear Municipal Water District)		\$ 50,000	\$ 50,000
	Forest Service: Atmospheric Deposition Monitoring including collection, sampling, delivery, & analysis (TMDL Task #5)			
	Forest Service: Tentative Natural Background Analysis			
	Total		\$ 150,000	\$ 150,000