

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

**MEETING OF JULY 10, 2019  
BISHOP**

<b>ITEM 9</b>
<b>ENFORCEMENT PROGRAM UPDATE</b>

<b>CHRONOLOGY</b>	
March 14, 2019	Water Board Agenda Item – Staff presented its <a href="#">2019 Annual Enforcement Program Update Staff Report</a> identifying programmatic issues and annual priorities, and providing recommendations for improving the Water Board’s Enforcement Program.

<b>BACKGROUND</b>
<p>The Lahontan Regional Water Quality Control Board (Water Board) staff has been providing annual updates regarding the Water Board’s Enforcement Program for about five years. Staff provided its most recent annual update at the March 13-14, 2019 Water Board meeting, focusing discussion on programmatic issues, annual priorities, and recommended actions to improve the Water Board’s Enforcement Program. Yvonne West, Director of the State Water Board’s Office of Enforcement, also provided a presentation providing the Office of Enforcement’s perspective of many of the same matters. Following both presentations and Water Board discussion, the Water Board directed staff to return in July for a more focused discussion on enforcement tools and efficiencies, unaddressed enforcement areas, and the role of the regulatory compliance assurance framework.</p>

- | <b>ISSUES</b>  |
|--|
| <ol style="list-style-type: none"><li>1. How does the Water Board use its regulatory and enforcement tools to protect water quality and beneficial uses?</li><li>2. Are there any ideas for new regulatory or enforcement tools to help the Water Board achieve greater success in restoring and protecting water quality?</li></ol> |

<b>DISCUSSION</b>
<p><b>Regulatory Compliance Assurance System</b></p> <p>To ensure activities in the Lahontan region are conducted in a manner that protects water quality and beneficial uses, the Water Board implements a Regulatory Compliance Assurance System (see Enclosure 1). This system consists of three programs working in succession: 1) Core Regulatory and Planning, 2) Informal Enforcement, and 3) Formal Enforcement and other actions. These three programs working in succession are also known as progressive enforcement. Both Water Board regulatory and enforcement activities have a common purpose; improving compliance</p>

with the state's water quality protection laws, policies, and regulations for protecting human health and the environment.

Recognizing the Water Board's regulatory and enforcement programs have a common primary objective provides options beyond the standard enforcement tools when addressing noncompliance. And while these options (e.g., new or revised waste discharge requirements, Vision projects) are not currently recognized consistently throughout the state as "enforcement actions," these options can restore compliance, sometimes more efficiently than our currently recognized enforcement actions (e.g., Notices of Violation, Cleanup and Abatement Orders, Cease and Desist Orders). Having more options increases the opportunity to identify and select a response, regulatory or enforcement, that is better aligned with a situation; and therefore, can more efficiently restore compliance.

The Water Board's regulatory and enforcement activities are truly interdependent. An active, effective enforcement program enhances compliance with permitting, monitoring, and reporting requirements. An effective enforcement program relies heavily upon the information generated through an effective regulatory program's self-monitoring reports, technical reports, and compliance inspections. Together, they more effectively enforce the state's water quality laws, policies, and regulations, resulting in improved water quality and protection of public health and the environment.

### **Addressing the Region's Unaddressed Enforcement**

Water Board staff discussed the Region's unaddressed work (see Enclosure 2) at the March 13-14, 2019 Water Board meeting during its Annual Priorities and Accomplishments agenda item and its Annual Enforcement Report agenda item. The unaddressed enforcement work can be split into two categories: (1) permitted or actively regulated facilities/projects/discharges; and (2) unauthorized/unpermitted facilities/projects/discharges.

At the March 2019 Water Board meeting, the Annual Enforcement Report listed six priority areas for the Regulatory and Enforcement Programs: providing replacement drinking water, cleaning up groundwater surface water pollution, increasing permit compliance, targeting enforcement actions at specific activities, continue implementing informal enforcement, and quickly initiating formal enforcement. With the six priority areas as a frame for work plans, the 2019 Annual Enforcement Report presented ten specific recommendations: 1) speed up formal enforcement, 2) expedite minor violation fines process, 3) increase active groundwater cleanup, 4) expand core regulatory programs, 5) procure additional enforcement staff, 6) improve quality of evidence, 7) expand participation in SEP Policy agreements, 8) continue enforcement at lowest effective level, 9) obtain technical assistance from Office of Enforcement, and 10) prioritize actions related to Department of Defense facilities.

**Permitted/Actively Regulated Facilities** – The March 2019 Board meeting agenda items highlighted the need for additional resources to improve compliance with state water quality protection laws, policies, and regulations by (1) increasing inspections; (2) increasing submittal and review rates for self-monitoring and other technical

reports; (3) revising outdated permits; and (4) informal and formal enforcement actions with adequate follow up, across all regulatory programs.

**Unpermitted/Unauthorized Waste Discharges** – Waste discharges to waters of the state from unpermitted facilities and projects is another significant workload that is currently unaddressed. There are two sub-categories: (1) waste discharges subject to regulation under an existing permit; and (2) waste discharges where there currently is no permit in place to regulate the discharge. The first sub-category of waste discharges is typically addressed through outreach followed by enforcement. The second sub-category is typically addressed through outreach, permit development, and enforcement. Both approaches require significant resources and are necessary for more fully protecting water quality through expanding compliance with the state’s water quality protection laws, policies, and regulations.

### **Tools and Efficiencies**

Water Board staff continues to work with the State Water Board on identifying, improving, and developing tools that are intended to increase the pace of compliance. Ideas for new or improved compliance tools include the following:

1. “Fix-it Ticket”
2. New Templates
  - Cease and Desist Orders
  - Time Schedule Orders
3. Interagency Investigation Agreements
4. Incorporating webcam or other real-time observation/reporting technology requirements into permits and monitoring programs
  - NPDES Storm Water Construction Projects
  - NPDES Storm Water Industrial Facilities
  - Mitigation Projects
5. Training

The combination of new resources and tools, such as those above, is what is necessary to expand and improve the effectiveness of the Water Board’s efforts to ensure compliance with the state’s water quality protection laws, policies, and regulations in a manner that truly protects and restores the quality and beneficial uses of the state’s waters.

### **Formal Enforcement Communications**

Certain formal enforcement actions (Enclosure 3) have structured communication processes to ensure fairness and impartiality. Certain communication rules apply in formal enforcement processes where the Water Board’s Prosecution Team acts separately from the Water Board’s Advisory Team. In these separation of functions roles, the Prosecution Team gathers evidence and presents its case by releasing either a complaint or proposed enforcement order. The proposed enforcement actions contain allegations regarding responsible parties and violations of laws, regulations,

and/or permit requirements, in addition to requirements for taking corrective actions or paying fines.

The Advisory Team releases hearing procedures at the same time or shortly after the proposed enforcement action is released. The Hearing Procedures, in part, identify how and when the Public participates in the Water Board's decision-making process regarding the proposed enforcement actions. While separated, the Prosecution Team and Discharger submit their technical and legal arguments for the case and can submit objections to the Hearing Procedures and requests for additional time at the Hearing. The Advisory Team makes rulings on the requests and objections prior to the scheduled Hearing.

**PUBLIC OUTREACH/INPUT**

None

**PRESENTER**

Scott C. Ferguson, Supervising Water Resource Control Engineer,  
Lahontan Regional Water Quality Control Board

**RECOMMENDATION**

This is an information item only. The Water Board may provide direction to staff as appropriate.

ENCLOSURE	ITEM	BATES NUMBER
1	Lahontan Water Board's Regulatory Compliance Assurance System	9 - 5
2	2019 Summary of Unaddressed Work	9 - 19
3	Formal Enforcement Communications	9 - 25
4	Water Board Staff Presentation	9 - 29

# **ENCLOSURE 1**



**Lahontan Water Board**  
**Regulatory Compliance Assurance System**  
**(Tools and Their Uses)**  
**June 26, 2019**

**Introduction**

To ensure activities in the Lahontan region are conducted in a manner that protects water quality and beneficial uses, the Water Board implements a regulatory compliance assurance system. This system consists of three programs working in succession: 1) Core Regulatory and Planning, 2) Informal Enforcement, and 3) Formal Enforcement and other actions. These three programs working in succession is also known as progressive enforcement.

**Core Regulatory and Planning**

The Core Regulatory Programs include wastewater, stormwater, non-point source, land disposal and mines, cannabis, site cleanup, Department of Defense, and vegetation management. The Core Regulatory Programs form the foundation of the Regulatory Compliance Assurance System. In this system, Water Board staff reviews project applications, comments on environmental documents, drafts permits for Water Board consideration, conducts inspections, and interfaces with permittees to assure compliance.

Regulatory permits are either individual or general. Individual permits are tailored specifically to a site or activity, and developing each individual permit takes time to work out details of requirements with the permittee, including monitoring and reporting provisions. General permits are developed where a common set of requirements applies to similar activities and sites, and individual permittees enroll for coverage; cannabis permits, and construction and industrial stormwater are a few examples of general permits. Though general permits take roughly the same time to develop as individual permits, enrolling individual permittees into a general permit results in more facilities having regulatory coverage. Not developing individual permits saves time in the long term, enabling Water Board staff to spend that time on inspections and other compliance actions. However, as more general permits are adopted and more facilities enrolled in general permit coverage, Water Board staff must prioritize inspections because additional enrollments in general permits do not come with additional staff resources. This means that more permitted sites go uninspected each year.

The Core Regulatory Programs routinely occupy more than 40 Water Board staff each year, which are collectively the largest programs in the region and the focus of the regulatory compliance assurance system work to proactively protect water quality and beneficial uses.

To more proactively help the regulated community and stakeholders, the Water Board implements planning programs. The Total Maximum Daily Load (TMDL) Program, Surface Water Ambient Monitoring Program (SWAMP), and Basin Planning Program all work in concert to give the public and Water Board appropriate tools to correct water quality problems and to protect water quality and beneficial uses. One example of a creative Basin Planning project is the Bishop Creek Vision Project (Visioning) that is focused on improving the overall watershed in a collaborative approach, rather than taking formal enforcement action. This effort will give us data on bacteria sources and to develop solutions in a collaborative manner. The Visioning is a new process from US EPA geared towards watershed improvement with non-point source pollution problems where a TMDL is not a good fit. It is possible more regulatory efforts will come from this project, such as updating existing permits and developing new general permits. These focused regulatory efforts will make improvements to water quality and hopefully eliminate the public health threat from bacteria in Bishop Creek.

Even with most of the Water Board staff working in Core Regulatory and Planning, activities affecting water quality continue to occur that are unpermitted and not in compliance with the Lahontan Basin Plan. When Water Board staff learns about an unpermitted activity, the next regulatory compliance assurance action depends on whether the water quality impact is correctable or not. Discharges of wastewater or sediment to surface waters are examples of uncorrectable water quality impacts. Wetland disturbance and spills to the land are examples of correctable water quality impacts. Correctable impacts will typically be handled by informal enforcement followed by permitting in the Core Regulatory Programs, while uncorrectable impacts will generally be handled through more formal enforcement.

### **Informal and Formal Enforcement**

For unpermitted activities that impact water quality, or if a permittee does not comply with permit conditions, then Water Board staff typically takes enforcement action. The enforcement action is either informal or formal, or a sequential combination of both. The main difference is that informal enforcement is an action taken by Water Board staff, while formal enforcement is an action taken by the Water Board or Executive Officer.

The State Water Resources Control Board's (State Water Board) Enforcement Policy established a framework and provided direction and guidance for the State and Regional Water Boards to develop/manage enforcement programs that are fair, firm, and consistent in their approach.

The Enforcement Policy also discussed the many enforcement tools that are available to assist the State and Regional Water Boards in their efforts to maintain the highest levels of compliance with state and federal water quality protection laws and regulations. Following is a table identifying those enforcement tools, broken into two categories, informal and formal.



<b>Informal Enforcement Actions</b>
Oral/Verbal Communication
Staff Enforcement Letter
Notice of Violation
<b>Formal Enforcement Actions</b>
Notice to Comply
Notice of Storm Water Noncompliance
Order for Technical Reports and Investigations
Cleanup and Abatement Order
Section 13300 Time Schedule Order
Section 13308 Time Schedule Order
Cease and Desist Orders
Administrative Civil Liability Complaints/Orders
Referral to the California Attorney General
Referral/Coordination with Other Regulatory/Prosecuting Agencies

**Informal enforcement actions** are any enforcement action that is not defined by statute or regulation. Such actions can be verbal, written, or electronic in nature. The purpose of informal enforcement actions is to quickly inform the discharger of violations or threatened violations, and provide the discharger with an opportunity to quickly take corrective action and to return to compliance as soon as possible. Informal enforcement actions can be issued singularly, or as an initial step in a more comprehensive enforcement strategy. Compliance with informal enforcement actions does not protect a discharger from additional enforcement action, although in many cases, compliance will result in no additional enforcement. However, noncompliance with informal enforcement actions will likely lead to one or more formal enforcement actions. Finally, informal enforcement actions cannot be petitioned to the State Water Board.

**Formal enforcement actions** are all defined in/established by statute or regulation. Such enforcement actions are typically imposed for threatened violations or violations of water quality laws, regulations, plans, policies, or orders, and require the discharger to develop/design and implement more extensive/complex investigations and/or corrective actions. Formal enforcement actions are also taken when a discharger does not comply with informal enforcement actions, and continues to violate water quality laws or regulations. In some instances, formal enforcement actions impose liabilities against the discharger to address water quality impacts, to address the discharger's history of violations, to ensure the discharger does not realize an economic benefit through noncompliance, and/or to provide an incentive to the discharger and others to maintain compliance with water quality laws and regulations. Most formal enforcement actions can be petitioned to the State Water Board.

Following is a more detailed discussion of the informal and formal enforcement actions available to the Water Board and its staff. A description of enforcement priorities and

enforcement strategies follows the discussion of informal and formal enforcement actions.

## **Informal Enforcement Actions**

### Verbal/Oral Communication

This enforcement action provides the most immediate and direct notice to the discharger of threatened or actual violations, discussing necessary corrective actions, and establishing a time schedule for returning to compliance. This action is most frequently used in the field to initiate corrective actions during inspections or on the phone after Water Board staff has reviewed a self-monitoring report (SMR) or technical report. Water Board staff has effectively used this enforcement action to address deficient BMPs (limited in extent, as opposed to wide-spread) at many construction sites throughout the region. Water Board staff has also effectively used this enforcement action to significantly improved compliance with its SMR program by simply calling dischargers and reminding them to submit complete SMRs on time.

### Staff Enforcement Letter (SEL)

This enforcement action is very similar in nature to the verbal/oral communication enforcement action, except that the information is provided in a written or electronic mail format. The benefit of this action over the verbal action is that there is a record of what information and direction was provided by staff to the discharger. Water Board staff typically describes the threatened or actual violations in general terms, and can transmit supporting documentation (e.g., inspection reports) with this enforcement action. For example, Water Board staff has been able to quickly transmit its inspection reports or those prepared by USEPA-contracted inspectors to the discharger with instructions to address the violations/deficiencies identified in the attached inspection report. Water Board staff can also use this enforcement action to document site conditions observed and agreements made during a facility/project inspection, and to request the discharger submit documentation/proof that the violations have been addressed. Water Board staff has effectively used this approach following numerous construction project inspections. As with the verbal/oral communication enforcement action, this enforcement action is best suited to minor violations that can be easily and quickly resolved with no additional enforcement action planned.

### Notice of Violation (NOV)

This is the most significant of the informal enforcement actions. It is used to address actual violations (e.g., unauthorized waste/pollutant discharges to surface or ground waters in violation of Basin Plan prohibitions; violation of effluent or receiving water limitations or other requirements prescribed by individual or general WDRs) and is sent to the discharger by certified mail.

NOVs identify specific violations in detail and typically require the discharger to prepare and submit a written response by a specific date. In many cases, the written response is to confirm and provide proof that the violations have been corrected, or to submit a plan and schedule identifying how and when the violations will be corrected. NOVs are also to identify the potential enforcement action that may be initiated in response to the violations, including administrative civil liability assessment. Water Board staff routinely issues NOVs for the following situations:

- Untreated sewage discharges to surface waters in violation of the Sanitary Sewer Overflow General Permit.
- Treated or untreated sewage discharges in violation of facility-specific WDRs and/or Basin Plan prohibitions.
- Multiple violations of effluent limitations, receiving water limitations, or other requirements established by individual or general WDRs, where the violations have resulted in adverse water quality impacts, or the violations indicate existing facility conditions/operations will eventually cause adverse water quality impacts if they continue.

NOVs frequently are the first enforcement action that is part of a more comprehensive, formal enforcement effort to address more significant, complex/chronic violations. However, a NOV can be the only enforcement action that is required to effectively address a set of violations.

### **Formal Enforcement Actions**

#### **Notices to Comply (NTC)**

Water Code section 13399 *et seq.* provides the authority to issue this enforcement action. An NTC is like a fix-it ticket (no liability if complied with), intended to address minor violations that are typically identified during a facility inspection. Minor violations for purposes of an NTC generally consist of:

- Inadvertent omissions and deficiencies with recordkeeping that do not affect staff's ability to determine compliance.
- Missing records that are required to be kept on-site (e.g., SWPPP), provided that the records exist and can be produced in a reasonable time.
- Inadvertent violations of administrative provisions that do not result in a waste discharge or threatened discharge.
- Violations that result in an insignificant discharge of waste or threatened discharge provided there is no significant threat to human health, safety, welfare, or the environment.
- Violations are limited in extent and frequency (i.e., not wide-spread, not chronic).
- Violations that can be corrected within 30 days.

Water Board staff is required to identify the violations subject to the NTC, and to specify a compliance date not to exceed 30 days. Additionally, the discharger is required through the NTC to submit proof of returning to compliance by a specified date. Finally, staff cannot initiate additional enforcement action (e.g., administrative civil liability) for the violations subject to the NTC, if the discharger complies with the NTC requirements.

Water Board staff's use of NTCs has historically been limited. Water Board staff most frequently issue NTCs at construction sites, and occasionally at other regulated facilities (e.g., wastewater treatment facilities, manufacturing facilities) that have limited, minor BMP deficiencies (e.g., missing BMPs, incorrectly installed BMPs, unmaintained BMPs).

### Notices of Storm Water Noncompliance

Water Code section 13399.25 *et seq.* requires each Regional Water Board to issue a Notice of Storm Water Noncompliance to NPDES stormwater dischargers failing to file a Notice of Intent to Obtain Coverage, a Notice of Non-Applicability, a Construction Certification, or Annual Reports. These documents are all elements of the state-wide and regional NPDES Stormwater Programs that regulate municipal, industrial, and construction-related stormwater discharges to waters of the United States.

If, after issuing two Notices of Stormwater Noncompliance, the discharger continues failing to file the applicable document, the Water Board is required to issue an Administrative Civil Liability Complaint against the discharger. The Water Board may also issue an Administrative Civil Liability Complaint against the discharger under its Water Code section 13385 authority, which does not require the two-notice process associated with Water Code section 13399.25 *et seq.*

Water Board staff's use of this enforcement action has been expanded significantly over the past approximately four years. Water Board staff has focused on dischargers that have failed to submit their Annual Reports required by the statewide Industrial and Construction Storm Water General Permits and the Lake Tahoe Storm Water Construction General Permit. Water Board staff has seen steady improvement in the number of dischargers submitting their Annual Reports since staff started issuing the Notices of Storm Water Noncompliance.

### Order for Technical Reports and Investigations

Water Code sections 13267, subdivision (b), and 13383 (NPDES Program) provide the authority for the State and Regional Water Boards to require dischargers to conduct investigations and to require any potential, current, or past discharger to submit monitoring or technical reports by specified dates. Section 13267 requires the State and Regional Water Boards to document that the burden of producing such reports, including the cost of the reports, bears a reasonable relationship to the benefits the reports will provide, and to explain the need for the report and identify the evidence supporting the need for the report. Failing to comply with orders issued pursuant to Water Code section 13267 is subject to civil liability up to \$1,000 per day of violation

(State and Regional Water Board administrative action) and \$5,000 per day of violation (Superior Court judicial action). Failing to comply with orders issued pursuant to Water Code section 13383 is subject to civil liability up to \$10,000 per day of violation (State and Regional Water Board administrative action) and \$25,000 per day of violation (Superior Court judicial action). Orders issued pursuant to either Water Code section are enforceable when signed by the Executive Officer or the Executive Officer's delegates.

Water Board staff use of this enforcement action has been and continues to be significant. Typical situations where this enforcement action is used include:

- Requiring a discharger to conduct a groundwater investigation to determine the extent of water quality impacts following a known or suspected waste discharge resulting in violations of receiving water limitations or Basin Plan prohibitions. Examples include Fort Irwin Wastewater Treatment Facility and Landfill Facility groundwater pollution/contamination, and Green Valley Foods Cheese Processing Facility groundwater pollution/contamination.
- Requiring a discharger to develop and submit a cleanup or corrective actions plan to address the impacts to groundwater quality or surface water quality or other violations related to a waste discharge. Examples include the Barstow Wastewater Treatment Facility Groundwater Remediation Plan and Los Angeles County Sanitation District No. 14, Lancaster Corrective Actions Plan.
- Requiring a discharger to investigate cause(s) of violations of effluent limitations or capacity-related (treatment or disposal) requirements prescribed by WDRs, and to submit the results and recommendations in a technical report. An example includes Leavitt Lake Community Services District Wastewater Treatment Facility assessment for effluent limitation-related violations indicating treatment capacity problems.
- Requiring a discharger to develop and submit a corrective actions plan to address the causes of effluent limitation or capacity-related violations.

In many cases, Cleanup and Abatement Orders and Cease and Desist Orders issued /adopted by the Water Board require the discharger to submit technical reports, in addition to implementing corrective actions. Under these situations, the requirements for such reports are still made under the Water Board's Water Code section 13267 authority, rather than its authority to issue the Cleanup and Abatement Order or Cease and Desist Order. This is an important point, as failing to submit the reports is subject to liability under Water Code section 13268 (\$1,000 per day of violation), rather than Water Code section 13350 (\$5,000 per day of violation), which addresses violation of Cleanup and Abatement Orders and Cease and Desist Orders.

#### Cleanup and Abatement Order (CAO)

Water Code section 13304 provides the authority for the State and Regional Water Boards to issue CAOs. This enforcement action may be issued to a discharger that has discharged or is discharging waste to waters of the state in violation of WDRs or other

orders or prohibitions adopted by the State or Regional Water Boards, or has caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged or deposited where it is, or probably will be, discharged to waters of the state and creates, or threatens to create, a condition of pollution or nuisance. Failing to comply with implementation-related requirements in a CAO is subject to civil liability up to \$5,000 (State and Regional Water Board administrative action) and up to \$15,000 (Superior Court judicial action). Other enforcement actions for failing to comply with a CAO include issuing a Water Code section 13308 Time Schedule Order or referral to the Attorney General for injunctive relief or monetary penalties. CAOs issued pursuant to Water Code section 13304 are enforceable when adopted by the State or Regional Water Board, or signed by the Executive Officer or the Executive Officer's delegates.

Water Board staff use of this enforcement action has been and continues to be significant. Typical situations where this enforcement action is used include:

- Requiring a discharger to implement a groundwater cleanup plan and schedule, such as Los Angeles County Sanitation District, No. 20 (Palmdale) nitrate groundwater pollution and Pacific Gas and Electric - Hinkley chromium groundwater pollution.
- Requiring a gas station owner with a leaking underground storage tank to remove the tank and implement a soil and groundwater cleanup plan and schedule.
- Requiring a discharger to implement a waste management plan intended to prevent additional pollutant discharges to surface or ground waters, such as a number of dairies in the southern Lahontan Region.
- Requiring a discharger to provide an alternative water supply, such as Pacific Gas and Electric - Hinkley, City of Barstow Wastewater Treatment Facility (Soapmine Road residents), and N & M Dairy.

#### Section 13300 Time Schedule Order (TSO)

Water Code section 13300 provides the authority to the State and Regional Water Boards to issue a TSO requiring compliance with a schedule of actions a discharger will take to correct the cause of ongoing violations, or to address conditions that threaten to cause violations. The schedule is developed by the discharger, and incorporated into the TSO with any modifications the State or Regional Water Board deems necessary. It is unclear what enforcement action can be issued in response to a failure to comply with the TSO itself. The violations leading up to and continuing through the TSO would be subject to civil liability up to varying maximum amounts depending upon the nature of the violations.

Water Board staff use of this enforcement action has been limited to instances where NPDES permittees have provided the Regional Water Board with a corrective actions schedule intended to address effluent limitation violations that are subject to mandatory minimum penalties. By issuing the TSO, the discharger does not accrue any additional mandatory minimum penalties as long as the discharger complies with the TSO. In such cases (Dept. of Fish and Game Hot Creek Hatchery and Victor Valley Wastewater

Reclamation Authority), the TSO also established interim effluent limitations and reporting requirements to track the discharger's compliance with the TSO.

### Section 13308 Time Schedule Order

Water Code section 13308 provides the authority for the State and Regional Water Boards to issue a TSO that prescribes civil liability for future violations of a CAO, Cease and Desist Order, or any other order issued pursuant to Water Code section 13267 or 13383. This enforcement action acts as a "last chance to comply" action. It identifies the civil liability that will be imposed if the discharger fails to return to compliance with the above-referenced orders in accordance with the time schedule prescribed by the Section 13308 TSO. The amount of the civil liability is to be based upon the amount thought reasonably necessary to achieve compliance. The civil liability amount is not to include any amount to punish or redress previous violations. An Administrative Civil Liability Complaint must be issued if the discharger fails to comply with the Section 13308 TSO. Payment of the liability prescribed by the Section 13308 TSO is not automatic.

Water Board staff has not used this type of TSO. It is the type of enforcement action the Regional Water Board would have to take prior to issuing an Administrative Civil Liability Complaint to a federal agency. It is also the appropriate enforcement action to take when the Regional Board wants to give a discharger one last chance to comply. This action replaces the practice of the Regional Boards adopting an Administrative Civil Liability Order that suspends a portion of liability specified in the corresponding ACL Complaint, dependent upon the discharger returning to compliance by a specified future date.

### Cease and Desist Order (CDO)

Water Code section 13301 provides the authority for the Water Boards to issue CDOs. CDOs are issued when the Water Board finds that a discharge of waste is occurring, or threatening to occur, in violation of WDRs or discharge prohibitions prescribed by the State or Regional Water Boards. CDOs can require the discharger to comply forthwith, to comply in accordance with a time schedule, or in the case of a threatened discharge, take appropriate preventative measures. The proposed CDO must be circulated for public review a minimum of 30 days prior to the Water Board considering it for adoption. Additionally, a formal public hearing must be conducted and a minimum of four affirmative votes are required to adopt a CDO. Failure to comply with a CDO is subject to civil liability up to \$5,000 per day of violation (State and Regional Water Board administrative action) and up to \$15,000 (Superior Court judicial action). Other enforcement actions for failing to comply with a CDO include issuing a Water Code section 13308 TSO or referral to the Attorney General for injunctive relief or monetary penalties.

Water Board staff typically pursues CDOs when the necessary corrective action requires extensive capital improvements or operational changes to address chronic violations. Following are a number of examples where the Water Board has issued CDOs.

<b>Facility</b>	<b>Reason for CDO</b>
Los Angeles County Sanitation District No. 20 (Palmdale) WWTP	Upgrade wastewater treatment facilities to reduce wastewater effluent nitrate concentrations to levels that can be applied to agricultural fields and other locations at agronomic rates. Doing so will cease increasing groundwater nitrate pollution caused by LACSD's wastewater disposal practices.
USFS Lassen National Forest Eagle Lake WWTP	Rehabilitate wastewater evaporation pond liners to cease a threatened discharge of waste to ground waters in violation of a Basin Plan prohibition.
Spalding Tract Residents	Connect or abandon onsite waste disposal systems to cease threatened discharges of waste to ground waters in violation of a Basin Plan prohibition.
Lake Arrowhead Community Services District WWTP	Implement an Inflow/Infiltration Reduction Plan to reduce the volume of inflow/infiltration entering the CSD's collection system and causing sanitary sewer overflows and unauthorized waste discharges from the WWTP to Grass Valley Creek.

CDOs are usually part of a comprehensive enforcement effort that can start with a Notice of Violation, expand to an Order for Technical Reports, followed by the CDO, and possibly ending with an Administrative Civil Liability Order.

#### Administrative Civil Liability (ACL)

Multiple Water Code sections provide the authority for State and Regional Water Boards to impose administrative civil liability, depending upon the type of violation. The process is lengthy and complex, typically involving issuing an ACL Complaint with a recommended liability, a period where staff and the discharger submit supporting testimony and evidence, a formal public hearing, and either adoption of an ACL Order or rejection of the Complaint. The Complaint's recommended liability is based upon a methodology described in the Enforcement Policy. The methodology takes into consideration the factors statute requires the State and Regional Water Boards to



consider when determining the appropriate civil liability to impose. The methodology was developed to establish a consistent process intended to produce similar results for similar situations.

There are variations to this process. One includes skipping the Complaint step and providing the Regional Water Board a Settlement Agreement and Stipulated Order for consideration. The proposed settlement must be circulated for public comment a minimum of 30 days prior to the Regional Water Board considering it for adoption. The Water Board may adopt the settlement as is, with modifications if staff and the discharger can agree to them and the modifications do not significantly change the nature of the proposed settlement, or request that staff and the discharger incorporate significant modifications and return at a later date with a new proposed settlement, or reject the proposed settlement and either direct staff and the discharger to return at a later date for a formal public hearing, or dismiss the enforcement action all together.

A second variation of this process involves the discharger waiving its right to a formal public hearing and paying the recommended liability. Such action constitutes a settlement, which must be circulated for public comment for a minimum of 30 days, after which the Regional Water Board can act upon the settlement. The Water Board Executive Officer also has the authority to accept the settlement on behalf of the Water Board.

Any of the processes can result in an ACL Order or Settlement Agreement and Stipulated Order that includes a Supplemental Environmental Project (SEP), which is funded by a portion of the total liability. SEPs must comply with the State Water Board's Policy of Supplement Environmental Projects (effective May 3, 2018) and the Enforcement Policy. Both policies identify qualifying criteria and limitations on how much of the total liability can be directed to a SEP. A critical part of the SEP development process is that the SEP must be proposed by the discharger. It does not matter if staff, the Regional Water Board, or the general public, want a specific project funded through a SEP if the discharger does not agree and propose it.

#### Referral to the California Attorney General

Multiple Water Code sections provide the authority for the State and Regional Water Boards to refer a discharger to the California Attorney General for injunctive relief or the potential for monetary penalties above those the State and Regional Water Boards may impose. Both injunctive relief and monetary penalties in excess of what the State and Regional Water Boards may impose require court action, and the Attorney General is the agency that represents the State and Regional Water Boards in such matters. The Attorney General also has broader authority to pursue enforcement and may add non-water quality violations to a Complaint filed with the courts. In some cases, referring a matter to the Attorney General can result in quick action, while in other cases it can be a very long and complex process.

The Water Board has not pursued this enforcement action very often. There have been a handful of cases where the matter of collecting an administrative civil liability imposed by the Water Board has been referred to the Attorney General, with mixed results. The Water Board has also referred a case seeking injunctive relief for a construction project, and another case where multiple state agencies were seeking injunctive relief and liabilities.

# **ENCLOSURE 2**





## 2019 SUMMARY OF UNADDRESSED WORK Lahontan Regional Water Quality Control Board

**Facility Inspections** - Many permitted facilities cannot be inspected on a regular basis because of insufficient staff resources to perform the inspections. For example, about 85% of construction/industrial sites, 75% of waste discharge to land facilities, 50% of 401 certification sites and 50% of land disposal sites go uninspected annually. To address the highest priority sites, staff will continue to evaluate inspection need and priority based on threat to water quality. We are exploring ideas for innovative ways to gain facility inspection-type information, such as Dischargers submitting videos/photos of the facility, because of limited staff resources prohibit us from physically visiting each site.

**Permit Updates** - Numerous individual permits and monitoring requirements at facilities require updates. For example, approximately 114 individual waste discharge to land requirements (WDRs) need to be updated and 15 reclamation WDRs should be updated consistent with the recycled water policy. Three NPDES permits require renewal – one, Susanville CSD requires collaboration with recycled water users and district on options to reduce flows to river. Also, approximately 9 land disposal facilities require revised monitoring programs or permits to address closure conditions, corrective action plans or other changes in facility operations. Staff continues to prioritize workload or redirect staff to address high priority sites.

**Unpermitted facilities** - Numerous facilities require permits to ensure protection of water quality and beneficial uses. The State Board Onsite Wastewater Treatment System Policy requires Water Board regulation of RV parks, schools, rest areas and other facilities with greater than 10,000 gallons per day. Over 220,000 acres of irrigated agricultural lands lack permits. Other non-point source pollution activities, such as grazing, discharges from rural roads are unpermitted. To indirectly address this need, staff is developing a draft general order intended to cover small wastewater facilities that process volumes up to 50,000 gallons per day. Staff are working on a tiered and performance-based approach in the general order that will prioritize facilities based on threat to water quality and beneficial uses.

**New Permits** – New facilities are being planned for construction that will require staff time to permit, without additional staff resources. These include alternative energy projects and new residential developments primarily in the South Lahontan areas. Though the applicants pay applicable permit fees, the addition of this work does not come with additional staff resources and these proposed new facility permits must be evaluated for threat to water quality and prioritized with all other work.

**Report Review** - Water Board orders typically require permittees to regularly submit technical and monitoring reports. About 1,650 self-monitoring reports are due annually. With a high volume of technical and monitoring reports submitted, combined with few staff resources, staff was able to review only about 750 reports. Without completing all reviews, staff is unable to determine if water quality and beneficial uses have been affected. Similar to exploring ways to



## 2019 SUMMARY OF UNADDRESSED WORK Lahontan Regional Water Quality Control Board

increase our facility inspections, staff will be exploring ideas to complete the report reviews so we can effectively evaluate the threat to water quality and beneficial uses.

**Statewide Policy Projects and Related Permit Updates** – The State Board recent adoption of new beneficial uses, or adoption of specific water quality objectives, or adoption of new statewide permits often requires Regional Boards to update Basin Plans or amend permits. This additional work does not come with additional staff resources, so we must prioritize these tasks with other tasks. Examples include the new beneficial uses of fish consumption for Tribal or Subsistence Fishing, adoption of statewide Irrigated Lands Regulatory Permit, and the new bacteria water quality objectives for the Recreation-1 beneficial use.

**Cleanup Sites** – Several groundwater cleanup sites do not have adequate staff to oversee remedial action. For example, the South Lahontan site cleanup unit identified workload (one position annually) at orphan sites that must expedite cleanup to restore drinking water supplies. About three (3) positions annually are needed to adequately address the orphan sites and protect beneficial uses from the polluted groundwater, including cleanup at nine (9) underground storage tank (UST) sites where there are no responsible parties. Work is also required at Department of Defense (DOD) sites with non-CERCLA pollution or sites containing emerging chemicals of concerns, such as PFAS compounds, found in soil and groundwater at over 17 DOD sites. PFAS compounds may become an issue at non-DOD sites, including landfills, airports, and wastewater treatment facilities because it is unknown if the groundwater contains those pollutants. Work on some DOD sites has been stalled due to various reasons including disputes on level of protectiveness, DOD unwillingness to incorporate State regulations into remedial strategies, and DOD contracting issues. Staff continues to prioritize workload to address high priority sites, based on threat to human health and the environment.

**Enforcement** –The Quarterly Violations Report identifies all violations, but not all violations can be addressed. The state provides not quite 2 fulltime positions for enforcement, but those resources are needed for updating databases, tracking informal enforcement actions, and on addressing formal enforcement. Formal enforcement takes a considerable amount of time to address because of the legal steps involving noticing, response time, and due process. Violations that affect water quality or human health are prioritized for enforcement. Emphasized use of informal enforcement approaches is improving compliance. Most resources on the informal enforcement come from our core regulatory programs, which are also inadequately funded. Review of submitted reports to ensure compliance is occurring and tracking failures to report continue to be a challenge.

**Water Quality Assessment** – Given the Water Board's large land base, ongoing assessment of water quality is challenging. Water quality impacts from abandoned mines or other historical industries remain unaddressed. Currently 119 listings of impaired water bodies are not being addressed. Limited opportunities and resources are available to ensure mitigation projects are successful; including use of in-lieu fees and mitigation banks. More work is needed to identify priority functions and values of surface waters requiring protection and impact avoidance.



## 2019 SUMMARY OF UNADDRESSED WORK Lahontan Regional Water Quality Control Board

Development of new rapid assessment tools for episodic streams is needed and the surface water ambient monitoring program has been cut back. Also, constituents of emerging concerns (e.g. pharmaceuticals) are not being monitored. Staff continues to prioritize workload and redirect staff to high priority projects.

**Surface Water Protection** - Additional work is needed to ensure protection of our surface waters, but we lack sufficient resources in these core regulatory programs. Several applications for using aquatic herbicides are pending in the Region and no additional resources are provided for this work. For example, we have applications from LADWP, Department of Water Resources, Tahoe Keys Property Owners Association in Lake Tahoe, and other private lakes are anticipated to be submitted. we need to assess minimum flows for maintaining beneficial uses. Additional work on total maximum daily limits (TMDLs) is required for Eagle Lake nitrogen and phosphorus listings and a Truckee River TMDL target assessment. Staff continues to prioritize workload and redirect staff to high priority projects.

**Basin Plan Updates** – Several basin planning projects cannot be completed including site specific objectives for surface waters including Hot Creek, addressing in-stream flow requirements, linking water quality objectives to beneficial uses, among others identified in the 2018 Triennial Review Priority list.

**Outreach and education** –We lack dedicated funding and staff to conduct necessary public, environmental justice or tribal outreach and education. Staff will continue to incorporate outreach into action items, such as permits and enforcement, and redirect staff from other tasks to conduct outreach.





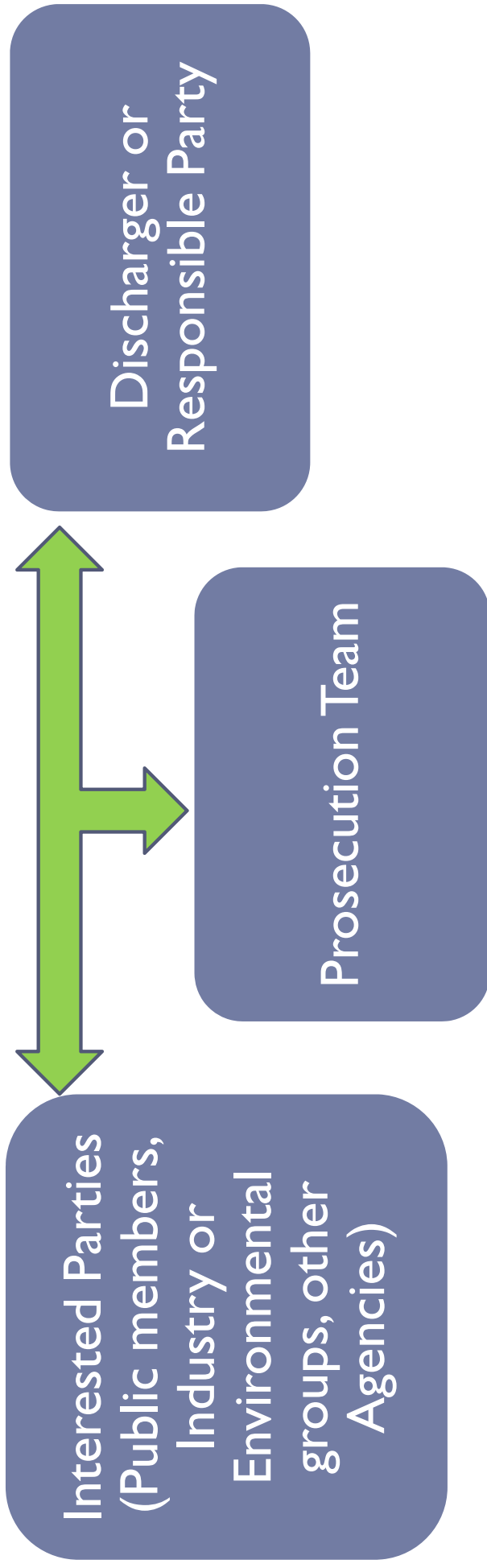
# **ENCLOSURE 3**



# Formal Enforcement Communication

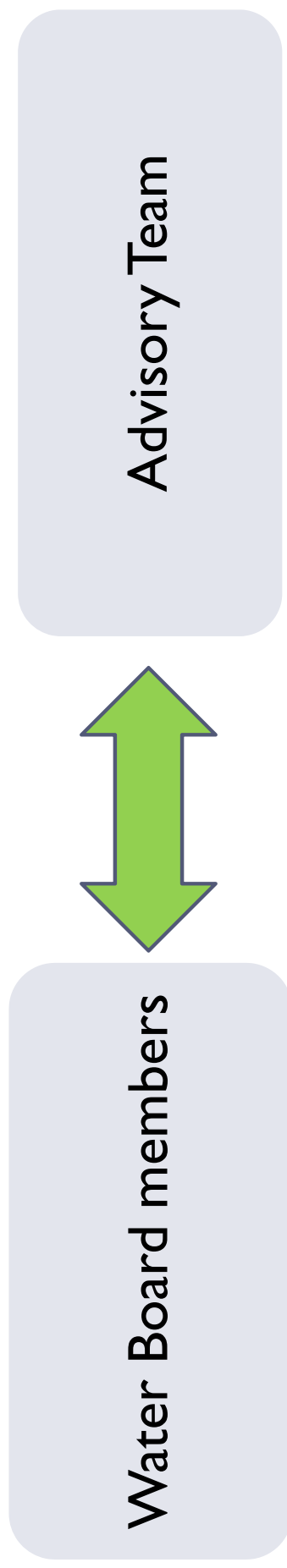
## when separated

*Green arrows = Allowed communication between parties during a pending enforcement action*



Parties above the red line **CANNOT** have “ex parte” communications with anyone below the red line

---





# **ENCLOSURE 4**



# Agenda Item No. 9

## Enforcement Program Update

Lahontan Water Board Meeting  
Bishop  
July 10, 2019



Scott C. Ferguson, P.E.  
Supervising WRCE

1

## Topics of Discussion

---

- Regulatory Compliance Assurance System
- Enforcement Tools and Efficiencies
- Formal Enforcement Communications

Item No. 5


2

# Regulatory Compliance Assurance System

---

1. Core Regulatory and Planning
2. Informal Enforcement
3. Formal Enforcement

Item No. 5




3

# Regulatory Compliance Assurance System

---

- Broader perspective
- More proactive options than traditional enforcement
- Results in more compliance

Item No. 5



4



# Regulatory Compliance Assurance System

---

Additional options and flexibility for responding to noncompliance:

- Individual permits and general orders
- Bishop Creek Vision Project
- Informal and formal enforcement

Item No. 5

5

# Bishop Creek Vision Project

---

- Exceeding Bacteria Water Quality Objectives – Public Health Threat
- Multiple Landowners and Stakeholders
  - Tribe, Public, and Private

Item No. 5

6

# Unaddressed Enforcement

---

- Permitted Activities
  - Increase compliance checking and responses to noncompliance
  - Priorities
    - Dredge and Fill, Storm Water, and WDR Programs

Item No. 5

7

# Unaddressed Enforcement

---

- Unpermitted Activities
  - Permit already in place
  - No permit available
- Additional Resources Required
  - Field presence and outreach
  - Permit development and enforcement

Item No. 5

8

## Tools and Efficiencies (Current)

---

- Informational Resources
- Templates
- Training
- Expedite Enforcement Processes

Item No. 5

9

## Tools and Efficiencies (Future)

---

- “Fix-it” Ticket
- Additional Templates
- Interagency Investigation Agreements
- New Technology
- Training

Item No. 5

10

# Formal Enforcement Roles

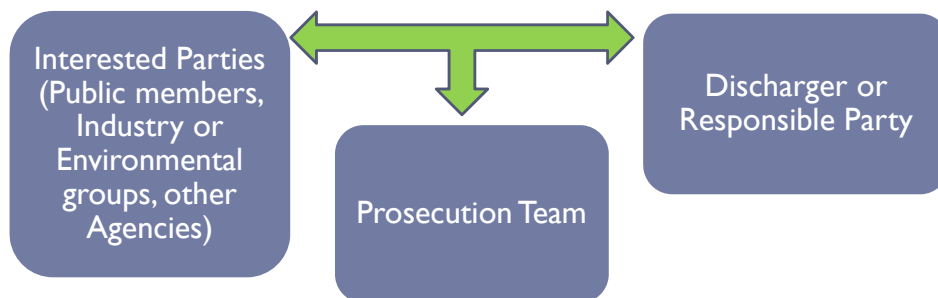
- When separated, creates Prosecution Team and Advisory Team
- Prosecution Team takes a position and presents its case to Water Board
- Advisory Team gives technical and legal advice to Water Board

Item No. 5

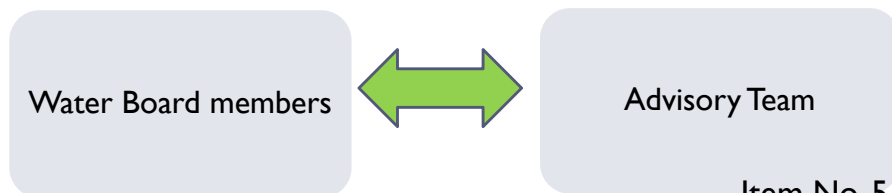
11

## Formal Enforcement Communication when separated

Green arrows = Allowed communication between parties during a pending enforcement action



Parties above the red line CANNOT have "ex parte" communications with anyone below the red line



Item No. 5

12

# Questions

---



Item No. 5