



California Regional Water Quality Control Board

Lahontan Region



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MINUTES

September 8-9, 2004

Regular Meeting

Lahontan Regional Water Quality Control Board
Inn by the Lake
3300 Lake Tahoe Boulevard
South Lake Tahoe, CA

Chair Eric Sandel called the meeting to order at 4:02 p.m.

BOARD MEMBERS PRESENT

William Betterley, Hesperia
John Brissenden, Hope Valley
Jack Clarke, Apple Valley
Amy Horne, Ph.D., Truckee
Eugene Nebeker, Ph.D., Lancaster
Eric Sandel, P.E., Truckee

BOARD MEMBERS ABSENT

None

LEGAL COUNSEL

Steven H. Blum, State Water Resources Control Board

STAFF PRESENT

Harold J. Singer, Executive Officer
Robert S. Dodds, Assistant Executive Officer
Lauri Kemper, Supervising WRCE, Northern Lahontan Watersheds Division
Chuck Curtis, Supervising WRCE, Planning and Toxics Division
Alan Miller, Senior WRCE, Northern Lahontan Rural Watersheds
Jason Churchill, Environmental Scientist, Northern Lahontan Rural Watersheds
T. Jerrold Peacock, WRCE, Northern Lahontan Rural Watersheds
Erika Lovejoy, Environmental Scientist, Lake Tahoe Watershed
Marietta Christoffersen, Office Technician
Pamela Walker, Administrative Officer

ADDRESSING THE BOARD

Laurel Ames, private citizen
Dennis Crabb, Alpine County
Banky Curtis, California Department of Fish and Game
Don Erman, private citizen
Nancy Erman, private citizen
Bob Fujimura, California-Nevada Chapter of the American Fisheries Society
Don Jardine, Alpine County
Mike Livak, Squaw Valley Ski Corporation
Ann McCampbell, private citizen (on speaker phone)

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Chad Mellison, U.S. Fish and Wildlife Service
Logan Olds, Susanville Consolidated Sanitary District (CSD)
John Regan, Trout Unlimited
Randy Sharp, U.S. Forest Service

2. **PUBLIC FORUM**

Mike Livak, Squaw Valley Ski Corporation, updated the Board on the status of compliance with the Cleanup and Abatement Order. Mr. Livak referenced an article in the Truckee newspaper regarding violations by Squaw Valley and the response letter he prepared and sent to staff.

1. **Executive Officer's Report**

Harold Singer commented on the following items from the September report:

Item No. 1 – Semiannual Report on Status of Basin Plan Amendments Mojave River Watershed Waste Discharge Prohibition Amendments

The amendments have been effective since spring. No exemption requests have been received to date.

Surface Water Standards, Antelope Hydrologic Unit (including Paiute Ponds)

One person attended the scoping meeting held in Lancaster. Peer reviewers comments were quite negative in relationship to what was being proposed. The Basin Plan Amendment process will be delayed since Regional Board staff needs to consider the peer reviewers comments and the initial justification for the revised standards. A compliance schedule in the Los Angeles County Sanitation District's WDRs for ammonia is linked to this Basin Plan Amendment. The compliance schedule will be reviewed to determine the effect of the delay.

Lake Tahoe Shorezone Amendments

Assuming TRPA approves the EIS for Shorezone Amendments, the Board would follow closely with proposed Basin Plan Amendment to modify, if not rescind the prohibition on piers in spawning areas.

Water Quality Objectives for Pesticides

The statewide General NPDES Permit for pesticide use is in conflict with the Basin Plan. An amendment that would allow the Board to consider an exemption on a case-by-case basis may be appropriate.

Truckee River Waste Discharge Prohibitions

Changes are being considered which would make exemption language consistent in both the Tahoe and Truckee Basins.

Item No. 2 – Donner Lake Fish Bioaccumulation Study

Tom Suk's great effort (in a very short timeframe) was acknowledged when the proposal he worked on received statewide funding.

Item No. 4 – Spalding Community Services District, Eagle Lake, Lassen County

The Region had four applicants for the small community grant program. The District was ranked #1 with a high likelihood they will receive the grant and move forward with the project.

Item No. 7 - Update on USFS Big Meadow Violation

The studies and evaluation of the impacts of what was built are nearing completion and an item will be on the November agenda.



Item No. 8 – Lake Tahoe Restoration Forum; Tahoe Center for Environmental Sciences Site Dedication

Mr. Singer noted there are two new funding sources, Southern Nevada Public Lands Management Act (1.5 million) and a Watershed Grant, available for the development and implementation of the Tahoe TMDL.

Amy Horne asked Mr. Singer to elaborate on removing MUN beneficial designation from Owens Lake, that would then allow the Board to consider permitting U.S. Borax to discharge wastes.

Other items:

Staff followed up with a letter on almost every violation in the report.

WQCC meeting is set for October 25, 2004 in Ontario.

The Board was asked if they wanted to change the days of the week meetings are held before the 2005 schedule is prepared.

Board members asked that large agenda items be page numbered and that of items in the agenda package which are duplicative be noted.

The afternoon session of the meeting adjourned at 4:58 p.m.

Regular Meeting, Continued
7:00 p.m., September 8, 2004

Chair Eric Sandel called the meeting to order at 7:04 p.m. Board members present: William Betterley, John Brissenden, Jack Clarke, Amy Horne and Eugene Nebeker

2. **PUBLIC FORUM**

Logan Olds, Susanville CSD, discussed status of the treatment system upgrade.

NEW WASTE DISCHARGE REQUIREMENTS AND NPDES PERMIT

3. ***Public Hearing – California Department of Fish and Game, Silver King Creek Rotenone Project, (NPDES NO. CA0103209)***

Mr. Sandel opened the public hearing and administered the oath.

Since the rules say materials have to be provided in advance, Mr. Blum informed the Board they needed to make a decision whether documents received tonight would be accepted into the record.

Eugene Nebeker recommended the Board accept into the record all single page documents but exclude the 3/8” thick document due to lack of time to read and digest it. All other Board members agreed.

Mr. Singer made some introductory remarks and asked the Board to consider the following as they listened to testimony:

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1. Do you want to pass judgement on fishery management plans prepared by the Department of Fish and Game and U.S. Fish and Wildlife Service and if so, how would you weigh the evidence before you?
2. Does the proposed project meet your Basin Plan criteria?
3. Are you willing to allow short-term and potential medium and long-term effects to achieve another agency's long-term goals and policies?
4. Is the proposed monitoring adequate for project implementation and to measure negative effects that will result? Will the monitoring adequately measure the theorized long-term recovery, and what is the long-term?
5. Discussion of the effective date. Part of the NPDES Program MOU with USEPA requires the Regional Boards to impose a 50-day effective date in permits that are controversial, allowing USEPA to review the final adopted permit to determine if comments have been addressed to their satisfaction. However, USEPA does not consider this activity subject to an NPDES permit, contrary to the State Board's opinion on this issue. Will a delay (if the Board specifies one) in the effective date delay the project?
6. Other methods of dealing with Tamarack Lake, using other methods that may be less toxic.

Mr. Singer concluded by stating that the staff recommendation would be made at the close of the hearing.

Jason Churchill, Environmental Scientist, made the staff presentation as follows:

- Project Purpose
- Project Description
- Permitting Chronology
- Permit Structure
- Basin Plan Rotenone Policy
- Major Issues Raised by Interested Parties
 - Chemical Residues/Toxicity
 - Impacts to Non-target species
 - Benthic Macroinvertebrates Communities
 - Rare/Unique Benthic Macroinvertebrates
 - Amphibians of Concern
- Other Objections/Concerns Raised
- Late Revisions
- Board Options for Permit Action

Lauri Kemper, Supervising WRCE, informed the Board that mandatory minimum fines (as well as discretionary penalties) are associated with NPDES permit violations.

Mr. Churchill responded to Board member questions.

Banky Curtis, California Department of Fish and Game, thanked Mr. Singer and staff for their hard work in completing the permit and performing the regulatory review in time to conduct the project.



Mr. Curtis related why the project was crucial. He pointed out that the Department's execution (as well as the U.S. Fish and Wildlife Service and the U.S. Forest Service) of this operation, according to the terms of the permit, would comply with the Board's Basin Plan for rotenone and is the only feasible and effective method for elimination of non-native fish. The Department's history of successful fisheries management operations using rotenone was then recounted.

In conclusion, Mr. Curtis stated that it is reasonable to exchange a temporary impact to the environment, done in strict accordance with state and federal laws and regulations, for the permanent protection of a rare endangered species.

Mr. Curtis responded to Board member and staff questions.

Chad Mellison, U.S. Fish and Wildlife Service, pointed out that although the document he authored was not accepted as part of the record (document was made available to the Board at the meeting), the "Draft" Revised Recovery Plan received an extensive peer and public review and was reviewed and commented on by Regional Board staff. He noted that the parts of the plan that pertain to the rotenone project had not changed.

The importance of restoring the Paiute Cutthroat trout and removing them from the endangered species list was emphasized.

Mr. Mellison responded to Board member questions.

Dennis Crabb, Alpine County Counsel, asked the Board to consider that governmental agencies spent very little time communicating with stakeholders, that in fact there may have been successful projects and it may be the only alternative, but that information was not conveyed. He discussed the economic impact of fishery closures and what the perception that waters of Alpine County are poisoned would have to the community.

Mr. Crabb noted that if Fish and Game plans to poison within five days, Alpine County would be denied the administrative remedy of appeal to the State Board and for that reason alone the permit should be denied or at a minimum, the permit would not be effective pending any appeal to the State Board.

Board members asked questions of Mr. Crabb.

Don Jardine, Alpine County Supervisor, stated there is no solid science to guarantee project success or long-term effects to Tamarack Lake and he stated that the Board of Supervisors had a philosophical objection to pollution of the waters of California. He also discussed the economic impacts the project would have to the area.

Supervisor Jardine responded to Board member questions.

Randy Sharp, U.S. Forest Service provided an overview of the Forest Service project approval process. He stated that the project, which received approval in April 2004, was consistent with the Toiyabe Land and Resource Management Plan and with the intent and scope of the Endangered Species Act. He pointed out that although the decision was challenged, project approval was affirmed after review by the Washington office, with one condition; obtain an NPDES permit prior to implementation.



Mr. Sharp responded to Board member questions.

Bob Fujimura, California-Nevada Chapter of the American Fisheries Society, read a letter from the president asking the Board to approve the NPDES permit.

John Regan, Trout Unlimited, urged the Board to approve the project and issue the permit, not solely for fishing purposes but because recovery of the trout prevents extinction.

Ann McCampbell, medical doctor and environmental health advocate, questioned the need to poison more and more miles of stream since it would never eliminate the risk that non-native fish could be transplanted. She also believed the project is an abuse of the Endangered Species Act since it is being used as an excuse to create unique angling opportunities, not to mention putting other species at risk in the name of helping one. Since no emergency exists, she urged the Board to reject the NPDES application until the innumerable loose ends are resolved.

Nancy Erman, Specialist Emeritus-Fresh Water Invertebrates and Aquatic Ecology, UC Davis, outlined her concerns as follows:

- Based on the poison label of Nusyn-Noxfish™, the project would be species extinction, not a restoration program since researchers consider some of the ingredients moderately to acutely toxic to fish and highly acutely toxic to aquatic invertebrate species.
- Although a Public Records Act Request was made to the Department of Fish and Game for two studies on macroinvertebrates, no response was received.
- Data that revealed a decline in the number of stoneflies should be a concern since aquatic insects are food for bats, fly catchers, warblers, dippers, amphibians, and reptiles as well as fish, including Paiute Cutthroat Trout (PCT).

Dr. Erman suggested that with no immediate threat to PCT, the project should be delayed so that an inventory of aquatic species in the Basin can be performed and an independent analysis of raw data from prior poisoning studies can be completed. She also noted the need to examine high water flows in relation to lower barriers on Silver King Creek because if the barriers are not barriers, there was no reason to poison miles of stream above them.

Dr. Erman responded to Board and staff member questions.

Don Erman, Professor Emeritus, Fresh Water Ecology and Fisheries, UC Davis, discussed the toxic chemicals and quantities of these chemicals that will affect aquatic invertebrates. He questioned the reasons for the project and stated there is no scientific evidence that PCT is being restored to historic habitat. Dr. Erman concluded by asking how the outcome could be considered recovery if one organism is killed to save another.

Board member questions followed.

Laurel Ames, private citizen, asked the Board to deny the proposed project because of procedural errors in noticing, failure of the applicant to provide adequate information per the Basin Plan criteria along with Basin Plan violations and she noted that administrative remedies would be denied since the proposed project was to begin in five days.



Mr. Singer and Mr. Blum reviewed information the Board should considering during deliberations.

Board discussion followed.

The Board took no action on this item. Staff direction was provided.

The evening session of the Board meeting adjourned at 11:38 p.m.

Regular Meeting, Continued
9:00 a.m., September 9, 2004

Chair Eric Sandel called the meeting to order at 9:02 a.m. Board members present: William Betterley, John Brissenden, Jack Clarke, Amy Horne and Eugene Nebeker

5. PUBLIC FORUM

No one addressed the Board during Public Forum.

6. MINUTES

- **Motion:** Moved by William Betterley, seconded by Jack Clarke and **unanimously carried** to adopt the April 14-15, 2004 and June 9-10, 2004 minutes as proposed. The May 12-13, 2004 minutes **carried** as proposed.

Dr. Nebeker abstained from voting on the May minutes, as he was absent from the meeting.

7. UNCONTESTED CALENDAR

- **Motion:** Moved by William Betterley, seconded by Jack Clarke and **unanimously carried** to adopt the Uncontested Calendar as proposed.

STATUS REPORTS

10. Los Angeles County Sanitation District No. 14 Lancaster Water Reclamation Plant – Status of Compliance with Waste Discharge Requirements Order No. R6V-2002-053

This item was removed from the agenda.

11. Los Angeles County Sanitation District No. 20 Palmdale Water Reclamation Plant and the City of Los Angeles World Airports – Status of Compliance with Cleanup and Abatement Order No. R6V-2003-056 Addressing Waste Discharges of Nitrate to the Ground Waters of the Antelope Hydrologic Unit

This item was removed from the agenda.



OTHER BUSINESS

12. Resolution Certifying a Mitigated Negative Declaration for Delta Slope Stabilization Project at Leviathan Mine

Mr. Sandel opened the public hearing.

Chris Stetler, Senior WRCE, responded to Board member questions and entered into the record that all legal requirements were met and that no comments were received.

Mr. Sandel closed the public hearing.

- **Motion:** Moved by Eugene Nebeker, seconded by William Betterley and **unanimously carried** to adopt the Resolution as proposed.

13. Reports by Chair and Board Members

John Brissenden updated the Board on the Sierra Conservancy bill. Amy Horne noted that the bill was a good example of bipartisanship. Mr. Brissenden also thanked staff for their hard work.

Eugene Nebeker informed the Board that a guidance manual for the reuse of reclaimed water is scheduled for publication in August 2006. Dr. Nebeker planned to send an outline to Board members for comment.

4. CLOSED SESSION

Board members met in closed session on September 9, 2004 from 9:15 a.m. to 10:01 a.m. for discussion of items e and r. Authority: Government Code 11126(a)(e).

The Board reconvened in open session at 10:02 a.m.

Board members discussed the possibility of beginning Board meetings earlier when lengthy items are on the agenda. Starting time for the October Board meeting was also discussed. The possibility of meeting on different days of the week and locations for meetings in South Lake Tahoe was considered.

With no further business to come before the Board, the meeting adjourned at 10:15 a.m.

Prepared by: _____ s/s _____ Adopted: February 9, 2005
Pam Walker, Administrative Officer



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