

Response to Comments – September 30, 2011

Basin Plan Amendment - Pesticide Prohibition & Exemption Criteria

(Comment deadline 5 p.m., May 13, 2011)

Tahoe Area Sierra Club

http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/comments051311/tasc.pdf

Comments	Response
<p>April 12, 2011</p> <p>Tahoe Area Sierra Club S. Lake Tahoe, Ca Contact: Co-Chairs: Laurel Ames 530-541-5752 Ron Grassi, 530-386-3862</p> <p>TASC BRIEF COMMENTS ON THE BASIN PLAN AMENDMENTS TO ACCOMMODATE PREVIOUS PESTICIDE USE PRACTICES AND INCREASE THE OPPORTUNITY FOR MORE USE OF MORE POISON IN THE LAKE TAHOE BASIN, THE EASTSIDE OF THE SIERRA AND THE EASTSIDE OF THE CALIFORNIA DESERTS.</p> <p>The TASC opposes unlimited poisoning experiments that last an unlimited amount of time, and produce unknown results. The accumulation of hundreds of these experiments is fraught with potential short and long-term impacts and it is entirely unknown whether the experiments will actually benefit the public in the long-term. All comments below apply equally to the entire Lahontan Basin and references to Lake Tahoe do not exclude the entire Lahontan Basin.</p> <p><u>Comments</u> Lahontan RWQCB is proposing a basin plan amendment that accommodates and facilitates use of pesticides, herbicides and piscicides in the waters of the Lake Tahoe Basin and its tributaries. While mosquito abatement is expected to continue with or without the basin plan amendment, the application of these poisons directly to the waters of the basin is intended to kill plants, fish, bugs and macroinvertebrates in the waters and the bottom sediments.</p> <p>The piscicide rotenone is <u>prohibited</u> for use on land and in marine bays, lagoons and estuaries. It is only allowed to be used in fresh water. It is banned in the EU for all applications. This poison kills <u>everything</u> in the water that uses oxygen.</p> <p>The amendments to the Basin Plan constitute a dangerous action that permits long-term impacts that are unknown to be undertaken over an unlimited amount of time until results are actually known, and that time is not known. The fact that the permit allows three unknowns (amount of time to test the poison and its killing ability in the lake and tributaries, a date when the results will be known, and the long-term impacts) all in the name of the public benefit is precarious at best.</p> <p>The long-term impacts are unknown and the public benefit is unknown.</p> <p>This is an experiment with no limits. Projects can receive a permit, take three years to complete, and two years later the monitoring of results begins, and</p>	<p>TASC R1: The number of projects is limited by the number of completed project applications submitted that meet the proposed Basin Plan Amendment exemption criteria and, where required, the Water Board acts to grant an exemption. It is inaccurate to define the projects as experiments, as future projects considered by the Water Board may include both experiments and projects that have occurred in the past in the Lahontan Region or elsewhere in the state. The project durations are not to be unlimited but will vary in length of time depending on a variety of project characteristics (e.g., mode of action of the aquatic pesticide being used, physical and chemical properties of the waterbody being treated). Since project monitoring is required, results will be submitted to the Water Board. This comment, originally aired during a meeting between TASC and Water Board staff on April 11, was presented to the Water Board at the April and May 2011 Board meetings. At these meetings the Board acknowledged the concern and directed staff to proceed as proposed without limiting projects numbers.</p> <p>TASC R2: The intent of a pesticide is to kill organisms, so there will be impacts. These impacts are expected to be short-term. Long-term impacts may occur as well, as acknowledged in the Substitute Environmental Documentation. Each project must undergo its own environmental analysis. If the analysis shows that significant impacts can not be avoided or mitigated to less than significant, then the project must be judged to be in the benefit of the public to receive an exemption to the prohibition. Projects implemented for public health and safety, and projects implemented for the protection of beneficial uses, are examples of projects that may be for the public benefit.</p> <p>TASC R3: Refer to TASC R2.</p> <p>TASC R4: The example given in the comment is a hypothetical situation describing a three year project that in total is a five to ten year project. Though the comment is conjecture, it does make a valid point about the duration of time between pesticide application and commencement of monitoring. The proposed language has been amended to reflect that monitoring will occur no less than annually after use of pesticides.</p>

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<p>sometime after that, results will be released, giving the public a five year project plus at least five to ten years for long-term results to be known</p>	<p>TASC R5: Refer to TASC-R1.</p>
<p>The process of permit to results described above is not limited to the number of experiments that can be conducted at any time. The only alleged limit is the requirement of an environmental document by the applicant. That kind of limit is about as fungible as possible – the agency can change the environmental document requirement to accommodate the poisoner. The agency can reduce the scope of the environmental document to accommodate the poisoner. The agency can waive the environmental document to accommodate the poisoner.</p>	<p>TASC-R6: The size and scope of a project, the purpose or intent of the project, as well as the potential for the project to impact the environment define the environmental documentation requirements. After learning the extent of environmental documentation required for a project, the proponent may choose to reduce the scope of a project. This reduction may reduce the environmental document requirements, but will also reduce the environmental impacts and may reduce the ability of the proponent to meet project goals.</p>
<p>There is no limit on the number of projects that can be undertaken anywhere in the Tahoe Basin or in the entire eastside of the state in the Lahontan Region. In the next 20 years, hundreds of large poisoning projects can be undertaken even though most of the results of these poisonings won't be known for years.</p>	<p>TASC R7: There is no specified limit on project number in the Lahontan Region. It is speculative that hundreds of projects would be proposed in such a time frame. Each project proponent must meet the exemption criteria and where required, the Water Board must consider granting the exemption. If projects are exempted from the proposed waste discharge prohibition for pesticides, monitoring (and in some cases mitigation) will be conducted. Such monitoring will inform future Board decisions and staff analysis of later exemption requests.</p>
<p>WHERE IS THE PUBLIC BENEFIT?</p> <p>The Proposed Basin Plan amendment claims a rigorous monitoring program. There is no contingency for a poisonier failing to monitor because of taxpayer funds being cut. There is no contingency for a poisoner failing to monitor because a contract was flawed. There is no contingency for a poisoner failing to monitor because climate change thwarted the monitoring regime. In short, there is no backup plan for the failure to perform the monitoring that is allegedly so rigorous.</p>	<p>TASC R8: These issues are not the purview of the amendment, but will be addressed through the permitting, compliance, and enforcement programs of the Regional Board. Refer criterion no. 7 in Chapter 4 of the Basin Plan under the section titled "Exemption Criteria for Controlling Aquatic Invasive Species (AIS) and Other Harmful Species," for requirement to identify a budget.</p>
<p>The Lahontan RWQ basin is faced with using an old technique (poisoning) because it is both accommodating and facilitating for short-term solutions.</p>	<p>TASC R9: Request to limit the number of projects is a reasonable request. This request was presented to the Board at the April and May 2011 meetings. At each meeting the Board expressed opinion that the control measures in the proposed language, and the discretion given the Board, satisfied the Board sufficiently and staff should proceed without limiting the number of projects.</p>
<p>The action is unconscionable. TASC requests that the Regional Board at the very least reduce the number of poisoning experiments to two and await complete results of long-term trends until authorizing any more such projects.</p>	