

Water Board Responses to California Public Comments

November 2, 2010

8. Sustainable Community Advocates



September 8, 2010

California Regional Water Quality Control Board
Lahontan Region
Attention: Mr. Doug Smith
Senior Engineering Geologist
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

**Re: Proposed Lahontan Basin Plan Amendments to Incorporate
the Lake Tahoe TMDL**

Dear Doug:

Thank you for the opportunity to provide written comments on proposed amendments to the Lahontan Region Water Quality Control Plan ("Basin Plan") intended to incorporate the Lake Tahoe Total Maximum Daily Load (TMDL), and changing portions of the Basin Plan to be consistent with recent scientific information. I understand that written comments and questions will precipitate a written response from Lahontan (LRWQCB) staff and I look forward to this formal response.

Those of us familiar with the process of developing the Lake Tahoe TMDL, and the research supporting it, understand that the TMDL identifies urban stormwater runoff as the largest source of fine sediment particles and phosphorous, and that the TMDL implementation plan emphasizes actions to reduce pollutant loading from urban runoff. We understand that the principle source of urban stormwater is from areas identified in the research as "urban uplands." These areas are characterized as Tahoe's "urban landscape." Accordingly, Tahoe's "urban jurisdictions" will be required to reduce their "baseline" pollutant loading to achieve TMDL standards and targets, including the 15-year interim milestone known as the "Clarity Challenge." We understand the "urban jurisdictions" to include the City of South Lake Tahoe, those portions of counties located within the Lake Tahoe Basin, and Caltrans, and the Nevada Department of Transportation for their roadway facilities in the Basin. We understand that the Nevada Department of Environmental Protection (NDEP), Lahontan's partner in TMDL Development, will be dealing directly with those urban jurisdictions located within the Nevada portion of the Basin.

Our Understanding - Questions

Based on the Tahoe TMDL analysis, the LRWQCB and NDEP assigned preliminary target pollutant reduction, or allocations, to the "urban jurisdictions." These preliminary allocations were primarily based on the use of large geographic scale models, including the Lake Tahoe Watershed Model and the Clarity Model. Later, the US Army Corps of Engineers and Placer County conducted an analysis using tools and models designed to work at a much smaller scale, with significantly different results in terms of baseline load calculations and the load available for reduction within the Placer County portion of the Tahoe watershed. Subsequently,

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we understand that the preliminary pollutant load reduction targets developed and issued by Lahontan/NDEP were withdrawn. Urban jurisdictions will now be responsible to develop their own baseline analysis for estimated baseline loads and the potential for pollutant load reduction.

- Is this understanding correct?
- Do Lahontan/NDEP plan to prepare and issue at least general written guidelines for the development of these pollutant load reduction analyses so there is consistency among the studies conducted by the affected “urban jurisdictions”?
- What process will Lahontan/NDEP use to consider and approve the technical methodology used by the urban jurisdictions to estimate loads and potential load reductions?

We understand that some knowledgeable sources believe it will cost each urban jurisdiction an estimated \$100,000 to \$200,000 (or more) to develop their own baseline analysis.

- Given today’s budget constraints, do Lahontan/NDEP have any ideas or plans to assist the urban jurisdictions in securing funds for the analysis required? (e.g., grant funds)?
- Are Lahontan and/or NDEP required by state or federal law to evaluate the economic impacts on urban jurisdictions and communities for the cost of TMDL compliance?
- If so, when will this evaluation be completed?

For the record, I believe it is important to state that the funding required to meet TMDL standards and related requirements will be just one set of costs related to the overall funding required for full implementation of the Lake Tahoe Environmental Improvement Program (EIP). As you are aware, the EIP is designed to support the more comprehensive work necessary to “achieve and maintain” all of the “Environmental Threshold Standards” adopted by the Tahoe Regional Planning Agency. While it is understood that Lahontan and NDEP have their focused areas of jurisdiction and regulatory powers, it would seem prudent and appropriate for Lahontan and NDEP policy makers to consider the costs of TMDL implementation in the broader EIP context.

- In connection with this consideration, what is the Lahontan/NDEP schedule “from today to enforcement” of the TMDL standards and requirements? Do Lahontan and NDEP have the resources (staff and funding) to meet this schedule?

Thank you again for the opportunity to submit these comments for consideration and a written response.

Respectfully,

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Steve Teshara, Principal
Sustainable Community Advocates

cc: Mr. Jason Kuchnicki, Nevada Department of Environmental Protection

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Response

SCAb-1: The June 2009 draft of the Lake Tahoe TMDL Report contained baseline waste load allocations for each jurisdiction. In the 2010 draft Lake Tahoe TMDL Report, those jurisdiction-specific baseline waste load allocations were replaced with a wasteload reduction requirement (in percent from baseline) for the basin-wide urban pollutant source and a requirement for each jurisdiction to estimate its 2004 baseline load.

SCAb-2: Same as Response SCAa-1

SCAb-3: Same as Response SCAa-2

SCAb-4: Federal and state funds have been awarded to several urban jurisdictions to assist in completing the Lake Tahoe basin baseline load analyses. Placer County has completed its baseline load analysis under a grant from the US Army Corps of Engineers and other jurisdictions are currently working on the baseline load analysis.

SCAb-5: In amending the Basin Plan, the Water Board must analyze the reasonably foreseeable methods of compliance with proposed performance standards and treatment requirements (Pub. Resources Code §21000 et seq.). This analysis must include economic factors, but does not require cost-benefit analysis. The Water Board and NDEP staff worked with regional and local experts to estimate the cost of implementing various pollutant control measures on a basinwide scale associated with adoption of the proposed Basin Plan amendment. The Pollutant Reduction Opportunity Report details the cost estimates for the proposed implementation of the TMDL. Individual jurisdictions are currently working to refine implementation cost estimates at a finer scale.

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Response

SCAb-6: The comment assumes that dischargers will not be able to comply with load reduction requirements that will be included in municipal NPDES stormwater permits and that the Water Board will need to enforce these conditions. This is speculative. The steps that can be reasonably anticipated include:

1. Adopt Basin Plan amendment, which includes the TMDL, by Regional Board, expected November 2010.
2. Issue early implementation order requiring local municipalities and Caltrans to estimate baseline pollutant loads and develop a pollutant load reduction plan to meet the first five-year target of a ten percent fine sediment particle reduction, anticipated in early 2011.
3. Approve Basin Plan amendment by State Water Board, anticipated in early 2011.
4. Approve Basin Plan amendment by California Office of Administrative Law, anticipated by mid-2011.
5. Approve Basin Plan amendment by US EPA, anticipated mid to late 2011.
6. Incorporate TMDL waste load allocations into applicable municipal NPDES permits, anticipated late 2011. For other source categories, issue reporting requirements, or take other regulatory actions to require and track load reductions by mid 2012.
7. Evaluate compliance with load reduction implementation actions and reporting requirements, ongoing.
8. Conduct reviews every five years of average annual load reduction estimates and lake response and consider adjustments, if needed, in the implementation schedule.



September 8, 2010

To: Lahontan Regional Water Quality Control Board

Fr: Steve Teshara, Principal

Re: Verbal Testimony - Proposed Basin Plan Amendments to Incorporate the Tahoe TMDL

My name is Steve Teshara, owner and Principal of Sustainable Community Advocates.

My interest and perspective is on the ability of Lake Tahoe communities to successfully integrate environment, economic and community needs and to be sustainable.

I appreciate the role and responsibilities of this Board and staff in terms of water clarity and quality.

I understand the challenges being faced by our local governments in terms of trying to meet many mandates. These are particularly difficult in a highly regulated environment like Lake Tahoe.

It's important for all us of to understand that the complex issues and huge sums of money we are talking about today in connection with the Tahoe TMDL represent just one element of the overall Lake Tahoe Environmental Improvement Program. Our local governments, our state and federal partners, our businesses and community have a seemingly overwhelming task to fund environmental improvements.

Here are some realisms we need to take into account:

- Vital federal and state funding for environmental improvements will be decreasing. This trend has already begun. If not for the Southern Nevada Public Land Management Act, the federal government would likely not have met its

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share of the first EIP. The Lake Tahoe SNPLMA program is now moving into its final full cycle.

- California state funding, for nearly everything, including local government assistance and support is in a free fall. None of us sitting here today knows where the bottom may be.
- Private sector investment is struggling everywhere, but particularly here at Lake Tahoe. Many in the private sector want to invest in the redevelopment of Tahoe's tired and outdated commercial infrastructure, but the private sector is handcuffed by complex regulatory and project review requirements. This is particularly ominous for the TMDL and Tahoe Clarity Challenge. We need to unlock private sector investment to help drive and fund the redevelopment of our communities that will have a meaningful, positive impact on both Tahoe clarity and water quality. As we sit here today, one of our most important partners has been regulated to the sidelines.

In terms of going to local voters around the Basin with a proposed Stormwater Utility Fee, a couple of observations –

- Unemployment in the City of South Lake Tahoe is now over 17%, some say headed for 20%. Elsewhere around the Basin, it is over 15% and rising.
- The Basin has lost some 9,500 permanent residents over the past 10 years, much of that loss here on the South Shore. Our residential and commercial tax base is shrinking dramatically.
- There are several stark indicators of poverty in our schools and community.
- While we here in this room may understand the benefits of a Stormwater Utility Fee, there has been no consistent education in the community about such benefits, and, in such uncertain economic times, the concept of a Stormwater Utility Fee is likely dead before arrival.

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I urge this Board and your staff to redouble your efforts to help provide and guide more details about the TMDL Implementation Plan. You're asking a lot of everyone, particularly the permittees, to support your proposed Basin Plan Amendments without understanding the implications of doing so. And, please, let's not use the silos of agency authorities as an excuse for not being more clear about implementation.

Questions:

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Response

SCAa-1: Water Board staff collaborated with technical experts, including representatives from the urban jurisdictions, during the development of the Pollutant Reduction Opportunity Report. With support from federal American Reinvestment and Recovery Act funds, the Water Board commenced a Support Services Contract with Environmental Incentives, LLC, to work with each urban jurisdiction getting geared up for components proposed in the Lake Clarity Crediting Program. All tools developed so far to help the urban jurisdictions in the implementation of the TMDL are available for downloading from the Water Board's Lake Tahoe TMDL website:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/tmdl/lake_tahoe/index.shtml#imp

The request for baseline load analysis and associated Pollutant Load Reduction Plans will include detailed guidance, and Water Board staff will work directly with municipal jurisdictions to address any questions or concerns as they arise.

SCAa-2: The Pollutant Load Reduction Model was developed with the input of stormwater managers to provide a continuous simulation tool to evaluate pollutant load and load reduction opportunities in the Lake Tahoe basin. Municipal jurisdictions in the Lake Tahoe area have already used this tool to conduct jurisdiction-scale baseline load analysis, and we anticipate others will similarly use this tool or an equivalent method. The proposed Basin Plan amendment has been changed to state that the Water Board may accept alternative load estimation tools provided such tools "demonstrably produce similar results" to the Pollutant Load Reduction Model or other continuous hydraulic simulation methods. Water Board staff will review draft products to ensure similar results are being produced from other methods.