

Lahontan Regional Water Quality Control Board

Date Distributed: October 24, 2018

MEETING AGENDA

The Board is conducting this meeting at location shown below:

Mojave Water Agency
13846 Conference Center Drive
Apple Valley, CA 92307

Wednesday, November 14, 2018, 6:30 p.m.
Regular Meeting

Thursday, November 15, 2018, 8:30 a.m.
Regular Meeting

Note: A quorum of the Water Board may be dining on Wednesday, November 14, 2018, at 5:00 p.m. at Mama Carpino's, 22010 US Highway 18, Apple Valley, CA 92307. The Water Board will not be discussing anything related to the Water Board's authority during this dinner.

General Meeting Information:

The following items are numbered for identification purposes only and will not necessarily be considered in this order. The meeting will not be called to order prior to the time specified. All Board files, exhibits, and agenda materials pertaining to items on this agenda are hereby made a part of the record for the appropriate item.

Comments on individual agenda items are welcome. All persons desiring to address the Board are requested to fill out a speaker card. If you are considering speaking or submitting written materials.

Adoption of Uncontested Calendar:

Items denoted by (x) are expected to be routine and non-controversial and will be proposed for the uncontested calendar. The Water Board will act on these items at one time without discussion. If any Water Board member or person requests discussion, the item may be removed from the uncontested calendar to be considered separately. Requests to have an item removed from the uncontested calendar can be made in advance of the meeting by emailing to the Executive Assistant at Katrina.fleshman@waterboards.ca.gov or by calling the Water Board's Executive Officer via her Executive Assistant, Katrina Fleshman at (530) 542-5414, or the request can be made to the Water Board at the meeting before the vote on the uncontested calendar.

REGULAR MEETING: Wednesday, November 14, 2018 at 6:30 p.m.

Call to Order and Introductions

1. Closed Session¹

- a. Discussion of Significant Exposure to Litigation. Authority: Government Code section 11126, subdivision (e)(2)(B)(i).
- b. Discussion to Decide Whether to Initiate Litigation. Authority: Government Code section 11126, subdivision (e)(2)(C)(i).
- c. To deliberate on a decision to be reached based upon evidence introduced in a hearing. Authority: Government Code section 11126, subdivision (c)(3).
- d. Discussion of Litigation: In re Molycorp, Inc., et al., Debtors, Chapter 11, Case No. 15-11357 (CSS), United States Bankruptcy Court, District of Delaware. Authority: Government Code section 11126, subdivision (e).
- e. Discussion of Litigation. People Ex Rel. Department of Fish and Wildlife; Regional Water Quality Control Board, Lahontan Region; and Department of Parks and Recreation v. Gloria Ching Lai Ma et al., Mono County Superior Court Case No. CV170080. Authority: Government Code section 11126, subdivision (e).
- f. Discussion of Litigation: Fox Capital Management Corporation v. Lahontan Regional Water Quality Control Board, El Dorado County Superior Court, Case No. SC20170189. Authority: Government Code section 11126, subdivision (e).
- g. Discussion of Litigation: Seven Springs Limited Partnership v. Lahontan Regional Water Quality Control Board, El Dorado County Superior Court, Case No. SC2018061. Authority: Government Code section 11126, subdivision (e).
- h. Discussion of Litigation: In re Genon Energy, Inc., et al., Debtors, Chapter 11, Case No. 17-33695 (DRJ), United States Bankruptcy Court, Southern District of Texas Houston Division. Authority: Government Code section 11126, subdivision (e).
- i. Discussion of Personnel Matters. Authority: Government Code section 11126, subdivision (a).

Note: The following Agenda items will begin approximately after 7:00pm:

2. **Public Forum** – A public forum is held at the beginning of each general meeting where persons may speak on matters within the Board’s jurisdiction that are not related to a specific agenda item or currently pending before the Water Board. Comments regarding pending or impending adjudicatory matters will not be allowed.
3. **Minutes** – The Water Board will consider adopting the minutes of the Regular Meeting of September 12, 13, 2018, in South Lake Tahoe, California. (Katrina Fleshman, Executive Assistant)
4. **x Amended Waste Discharge Requirements for U.S. Borax, Inc., Rio Tinto Minerals Clean Energy Fuels Company, Boron Facility, Kern County**. The Water Board will consider adopting amended Waste Discharge Requirements to authorize an engineered alternative for a surface impoundment liner. (Christina Guerra)
5. **Rescission of Silver King Creek NPDES Permit** - The Water Board will consider rescission of the permit issued to California Department of Fish and Wildlife (CDFW) for treatment with rotenone to eradicate non-native trout for the Paiute Cutthroat Trout Restoration Project in Alpine County. (Ben Letton)

¹ At any time during the regular session, the Board may adjourn to a closed session to consider litigation, personnel matters, or to deliberate on a decision to be reached based upon the evidence introduced in the hearing. Discussion of litigation is within the attorney-client privilege and may be held in closed session. Authority: Government Code section 11126, subdivisions (a), (c)(3) and (e).

6. [Update on Harmful Algal Blooms \(HAB\)](#) – Water Board staff will present a summary of the HAB responses and public workshops in the Lahontan Region during 2018. Staff will also provide a status update on a regional response strategy/plan for 2019. This is an informational item and no action will be asked of the Water Board though members may provide direction to staff. (Mary Fiore-Wagner)

Adjournment

REGULAR MEETING: Thursday, November 15, 2018 at 8:30 a.m.

Call to Order and Introductions

7. **Public Forum** – A public forum is held at the beginning of each general meeting where persons may speak on matters within the Board's jurisdiction that are not related to a specific agenda item or currently pending before the Water Board. Comments regarding pending or impending adjudicatory matters will not be allowed.
8. [Enforcement Policy Update](#) – Water Board staff will provide information on updates to the statewide Enforcement Policy and how it affects the Lahontan Region's Enforcement Program. No action will be asked of the Water Board though members may provide direction to staff (Jeff Brooks).
9. [Local Agency Management Program \(LAMP\) for the City of Barstow](#) – Water Board staff and city representatives will present the LAMP to the Water Board. The Water Board will consider approving the LAMP for the City of Barstow, San Bernardino County. (Mike Coony)
10. [Hearing and Consideration of the 2018 Triennial Review of the Water Quality Control Plan for the Lahontan Region \(Basin Plan\)](#) – Water Board staff will present a proposed resolution and 2018 Triennial Review list to prioritize basin planning projects and will summarize comments submitted by the public. The Water Board will consider adopting the proposed Resolution and 2018 Triennial Review list of prioritized basin planning projects. (Dan Sussman)
11. **Reports by Water Board Chair and Board Members** – The Water Board members will provide updates to the Water Board and public on events and activities of interest.
12. [Executive Officer's Report](#) – The Executive Officer will provide an update to the Water Board and public on key actions and activities in the Lahontan region, including the items below. No action will be asked of the Water Board though members may provide direction to staff. (Patty Z. Kouyoumdjian).
 - Standing Items
 - Executive Officer's Report
 - 2nd Quarter Violations Report
 - Notification of Spills (Pursuant to Water Code section 13271, and Health and Safety Code section 25180.7)

Adjournment

AGENDA PROCEDURES AND NOTES

The Water Board will be considering many items during this meeting which may result in Board action or direction to staff. We encourage input from all people interested in a given item or issue, so that when we act, our decision is based on all available information. Although an oath is not administered in most of the proceedings before this Board, we expect all statements made before this Board to be truthful with no attempts to mislead this Board by false statements, deceptive presentation, or failure to include essential information.

The Board encourages all people in or near a Board meeting to refrain from engaging in inappropriate conduct. Inappropriate conduct may include disorderly, contemptuous or insolent behavior, breach of peace, boisterous conduct, violent disturbance, or other unlawful interference in the Board's proceedings. Such conduct could subject you to contempt sanctions by the superior court (Gov. Code § 11455.10).

The Board Chairperson may impose sanctions, including reasonable expenses and attorney's fees, on any party for bad faith actions, frivolous tactics, or actions intended to cause unnecessary delay by a party or the party's attorney or representative (Gov. Code § 11455.30).

SEQUENCE OF AGENDA ITEMS

The items are numbered for identification purposes only and will not necessarily be considered in this order.

AVAILABILITY OF AGENDA MATERIAL

Details concerning these agenda items are available for public reference during working hours at the Board's offices and on the Board's website www.waterboards.ca.gov/lahontan. Copies of individual agenda items may be obtained at the Board's offices after 8:00 a.m. on the Friday, twelve days preceding the Board meeting. The staff will assist in answering questions.

Supporting documents for agenda items are posted on our website at least 10 days prior to the scheduled meeting. If you wish to be added to the interested persons list for a specific agenda item, please contact the staff person listed with the item in the agenda announcement. To view or download documents, go to www.waterboards.ca.gov/lahontan. (See note below for information on the timing for submitting comments.)

ADDITIONAL CLOSED SESSION

At any time during the regular session, the Board may adjourn to a closed session to consider litigation, personnel matters, or to deliberate on a decision to be reached based upon evidence introduced in the hearing. Discussion of litigation is within the attorney-client privilege and may be held in closed session. Authority: Government Code section 11126, subdivisions (a), (c)(3), and (e).

ACCESSIBILITY

The meeting room is accessible to people with disabilities. If you have special accommodations or language needs, please contact Katrina Fleshman, Executive Assistant, at least five days prior to the meeting date at (530) 542-5414 or Katrina.Fleshman@waterboards.ca.gov TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

PUBLIC FORUM

Any person may address the Water Board regarding a matter within the Water Board's jurisdiction that is not related to an item on this meeting agenda or currently pending before the Water Board.

Comments will generally be limited to five (5) minutes. Any person wishing to make a longer presentation should request an extension from the Executive Officer at least fifteen (15) days prior to the meeting, and if you want written materials to be provided to the Water Board, you are responsible for providing twelve (12) copies to the Executive Assistant at least ten (10) days prior to the meeting. Comments regarding matters that are under development for future meetings or not within the Water Board's regulatory authority will be restricted. Comments regarding pending or impending adjudicatory matters will not be allowed.

ORAL COMMENTS AND PRESENTATIONS

The purpose of the meeting is to provide the Water Board with an opportunity to receive testimony and information from concerned and affected persons and to make decisions after considering the evidence presented. In order to give everyone an opportunity to be heard, a time limit for oral comments may be imposed on any agenda item. Comments will generally be limited to five (5) minutes. Interested persons are encouraged to submit their comments in writing by the applicable due date and use time for oral comments to summarize those concerns. Any person wishing to make a longer presentation should request an extension from the Executive Officer at least ten (10) days prior to the meeting.

Anyone wishing to present a Microsoft PowerPoint® presentation during the meeting, using the Water Board's projector, must provide the presentation to the Water Board on either a flash drive or via email at least ten (10) working days prior to the meeting. Please contact the staff person listed for the agenda item of interest or the Executive Assistant.

WRITTEN COMMENTS

Comments on individual items are welcome and encouraged. Written comments on an agenda item must be submitted on or before the due date listed in the hearing notice associated with the agenda item. Hearing notices are posted on the Water Board's web site at: www.waterboards.ca.gov/lahontan.

For items on the agenda that do not have a separate hearing notice with specific due dates, written comments must be submitted at least ten (10) days before the meeting to the Executive Assistant, Katrina Fleshman (Katrina.Fleshman@waterboards.ca.gov). This allows time to distribute the material to Water Board members in advance of the meeting, providing the opportunity for the members to read and consider the information submitted. If you would like written materials to be provided to the Water Board in hard copy, you are responsible for providing twelve (12) copies to the Executive Assistant at least ten (10) days before the meeting.

Pursuant to California Code of Regulations, Title 23, section 648.4, the Water Board may refuse to admit written testimony into evidence unless the proponent can demonstrate why he or she was unable to submit the material on time or that California Code of Regulations, Title 23, section 647 et seq., and compliance with the deadline would otherwise create a hardship. If any other party demonstrates prejudice resulting from admission of the written testimony, the Water Board may refuse to admit it. A copy of the procedures governing Water Board meetings is available upon request. Hearings before the Water Board are not conducted pursuant to Government Code section 11500 et seq.

HEARING RECORD EXHIBITS

Material presented to the Board as part of the testimony that is to be made part of the record must be left with the Board, with a hard copy to the Acting Executive Assistant. This includes photographs, slides, chart, diagrams, etc.

EX PARTE REQUIREMENTS

An ex parte communication is a communication to a board member from any person, about a pending or impending matter, that occurs in the absence of other parties and without notice and opportunity for them to respond. The California Government Code prohibits the board members from engaging in ex parte communications on permitting, enforcement, and other “quasi-adjudicatory” matters. A communication about a pending adjudicative matter, received during a public forum, or during the public meeting when the item is not noticed, may violate the ex parte prohibition. Ex parte communications are allowed on pending general orders (such as general waste discharge requirements, general waivers, and general Clean Water Act section 401 water quality certifications) subject to the disclosure requirements of Water Code section 13287 (for further information and disclosure forms, please visit https://www.waterboards.ca.gov/lahontan/publications_forms/forms/docs/lahontan_disclosure011813.pdf).

The ex parte rules are intended to provide fairness, and to ensure that the board’s decisions are transparent, based on the evidence in the administrative record, and that evidence is used only if stakeholders have had the opportunity to hear and respond to it. A board member who has engaged or been engaged in a prohibited ex parte communication will be required to publicly disclose the communication on the record and may be disqualified from participating in the proceeding. For more information, please look at the ex parte questions and answers document found at www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf.

CONTRIBUTIONS TO REGIONAL BOARD MEMBERS

All persons who actively support or oppose the adoption of waste discharge requirements or an NPDES permit before the Lahontan Water Board must submit a statement to the Board disclosing any contributions of \$250 or more to be used in a federal, state, or local election, made by the action supporter or opponent, or his or her agent, within the last 12 months to any Water Board member. All permit applicants and all persons who actively support or oppose adoption of a set of waste discharge requirements or an NPDES permit pending before the Water Board are prohibited from making a contribution of \$250 or more to any Board member for three months following a Water Board decision on the permit application.

PETITION OF REGIONAL BOARD ACTION

Any person aggrieved by an action of the Lahontan Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, Title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date the action was taken, except that if the thirtieth day following the date the action was taken falls on a Saturday, Sunday or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulation applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

WATER QUALITY CERTIFICATION

A listing of pending applications for Water Quality Certification pursuant to Section 401 of the Clean Water Act, may be obtained by contacting the staff below:

Northern Lahontan Basin:

Robert Tucker in South Lake Tahoe at (530) 542-5467, robert.tucker@waterboards.ca.gov

Southern Lahontan Basin:

Jan Zimmerman, in Victorville at (760) 241-7376, jan.zimmerman@waterboards.ca.gov

The Lahontan Water Board, has a home page that can be accessed on the Internet, at: <http://www.waterboards.ca.gov/lahontan>

RECORDINGS

Recordings are made of each Water Board meeting and are retained on the Lahontan Water Board website at: <http://www.waterboards.ca.gov/lahontan>

LAHONTAN WATER BOARD MEMBERS

California Water Code section 13201 provides for the Governor to appoint seven members to the Regional Water Quality Control Board. Each member shall reside or have a principal place of business within the region. Appointments are subject to confirmation by the state Senate.

Name	From	Term Expires
Peter C. Pumphrey, Chair	Bishop	9/30/19
Don Jardine, Vice Chair	Markleeville	9/30/19
Kimberly Cox	Helendale	9/30/18
Keith Dyas	Rosamond	9/30/20
Amy Horne, PhD.	Truckee	9/30/18
Eric Sandel	Truckee	9/30/21
Vacant		

LAHONTAN WATER BOARD CONTACTS

Patty Z. Kouyoumdjian, Executive Officer
 Doug Smith, Assistant Executive Officer
 Elizabeth Beryt, Counsel to the Board
 Katrina Fleshman, Executive Assistant

To reach the Executive Officer, please contact her Executive Assistant, Katrina Fleshman, via email at Katrina.Fleshman@waterboards.ca.gov or call (530) 542-5414.

The primary responsibility of the Water Board is to protect the quality of the surface and groundwater within the Region for beneficial uses. The duty is carried out by formulating and adopting water quality plans for specific groundwater or surface water bodies; by prescribing and enforcing requirements on domestic and industrial waste dischargers, and by requiring cleanup of water contamination and pollution. Specific responsibilities and procedures of the Board are outlined in the Porter-Cologne Water Quality Control Act.