

ENCLOSURE 8

Response to Comments – November 23, 2011

Basin Plan Amendment - Pesticide Prohibition & Exemption Criteria

(Comment deadline 12 p.m., November 14, 2011)

Clean Lakes Inc.

http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/comments111411/cleanlakes_comments.pdf

Comments

Response



November 14, 2011

Lahontan Regional Water Quality Control Board
 C/O Daniel Sussman or Mary Wagner
 2501 Lake Tahoe Blvd.
 South Lake Tahoe, CA 96150

Subject: Clean Lakes, Inc.'s Comments to the "REQUEST FOR PUBLIC COMMENT ON PROPOSED AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION: PESTICIDE PROHIBITION WITH EXEMPTION CRITERIA, REVISED DRAFT"

Dear Mr. Sussman or Ms. Wagner:

Clean Lakes, Inc. (CLI) appreciates the opportunity to provide comments for the Draft Pesticide Basin Plan Amendment for the Lahontan Region (6) Basin Plan. CLI staff support the proposed amendments and recognizes the effort of Lahontan Board staff required in developing an approach that facilitates pesticide applications for beneficial purposes.

We have the following comments from the related documents for your consideration:

Staff Report – Page 6, Issue 1: "Examples of such activities include vector control by local agencies, restoration or protection of threatened or endangered species, and control of aquatic weeds or algae to protect navigation, water conveyances, or public water supplies". Wording for the control of aquatic weeds and algae should include wording to prevent the spread of nuisance invasive species (i.e. Eurasian Watermilfoil and Curlyleaf Pondweed), or general Ecological Preservation - Aquatic Invasive Species (AIS).

Staff Report – Page 17, Paragraph 2: Projects that may be allowed under this Basin Plan Amendment should also include projects implemented for purposes of Ecological Preservation - Aquatic Invasive Species (AIS).

Staff Report – Page 18, Paragraph 4. The statement, "The aquatic pesticide application will temporarily preclude the continued beneficial use supported within the treatment area", does not agree with the statement in sentence two of this same paragraph. It is not clear what beneficial use(s) will be temporarily precluded. This sentence should be deleted.

Staff Report – 38.7 (a): II. Environmental Impacts: Page 53, Paragraph 1, Greenhouse Gas Emissions: The statement "Some greenhouse gas emissions, namely methane release, may result from the decay of vegetation treated with aquatic herbicides". Any

CLI R1: As recommended, on page 6 of the Staff Report, "ecological preservation" has been included as an example of a possible reason to apply aquatic pesticides to control aquatic weeds or algae.

CLI R2: The existing language adequately captures circumstances (i.e. those conducted for protection of public health and safety or ecological preservation) where the use of aquatic pesticides may be allowed under this amendment. Though projects proposed for purposes of controlling aquatic invasive species for ecological preservation are not explicitly identified on page 17, para.2 of the Staff Report, the Water Board may provide a prohibition exemption for these types of projects where there is a nexus to ecological preservation.

CLI R3: The sentences are not in conflict. Both sentences disclose temporary, short-term impacts to beneficial uses.

CLI R4: Refer to next page for response CLI R4.

07-00287

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<p>CLEAN LAKES INC.</p> <p>potential greenhouses gasses that result from the decay of vegetation treated with aquatic herbicides would generally be the same gasses created on a seasonal basis when the plants decay each fall. Through the control of aquatic vegetation with herbicides, it would be expected that control would be initiated when the plants are in the early growth stage, and thus less decayed biomass would be present, and thus any greenhouse gases produced would be less than if the vegetation was allowed to grow and increase in biomass prior to fall dye back. This section should be modified as the vegetation decays on an annual basis, and no additional impact from greenhouse gas production would result from aquatic herbicide treatments.</p> <p><u>Staff Report –Page 38, 7 a) and Page 53, Paragraph 1.</u> The statement that, “The proposed project requires that dead biomass, a potential emission source, must be removed from the project area and disposed of at an appropriate location”, is unreasonable for all aquatic plant control programs. In some circumstances, such as in the control of emergent or floating vegetation, removal of dying or dead biomass is feasible. However, in the case of submersed aquatic plant control projects (i.e. Eurasian watermilfoil) collecting dead biomass is not feasible or practical since plants will fragment into small uncollectable pieces. The only practical way that dead biomass might be collected is through a dredging related activity that would likely cause greater impacts to native vegetation and higher levels of green house gases through the required use of combustion engine equipment. Selective control of invasive aquatic plants through use of aquatic herbicide applications would reduce long term organic material accumulation, as well as potential production of greenhouse gases, by eradicating or greatly reducing the invasive plant species. (See attached articles, Maintenance Control of Aquatic Plants by Bill Haller, Aquatics - Summer 1981; Benefits of Maintenance Control of Water Hyacinth by James Joyce. Aquatics – Winter 1985; Understanding Organic Accumulation of Selected Aquatic Plants in Florida by Dana Bigham. Aquatics – Fall 2009). This Eurasian watermilfoil biomass removal recommendation should be modified or deleted.</p> <p><u>Attachment 2, Revised Draft Waste Discharge prohibition and Exemption Criteria, Page 8, 1 c.</u> states the need for, “The chemical composition of the pesticide to be used, including inert ingredients.” Inert ingredients are thought to be considered proprietary or intellectual property. <u>Board staff should clarify with pesticide manufacturers their ability to provide this information prior to finalizing this BPA.</u></p> <p><u>Attachment 2, Revised Draft Waste Discharge prohibition and Exemption Criteria, Page 10, section 2.</u> Under this paragraph which falls under Exemption criteria for controlling aquatic invasive species and other harmful species, time sensitive projects, it appears that the statement, “(Removal of biomass may not be necessary in situations where recovering the dead biomass creates greater potential impact to water quality)” is inconsistent with Staff Report Pages 18, 38, and 53 outlined above.</p>	<p>CLI R4: Page 38, section 7.a) and page 53, para. 2 of the Staff Report have been modified to acknowledge that the treatment of invasive aquatic vegetation in the early growing stage may produce less greenhouse gases compared to aquatic vegetation that was untreated and underwent seasonal growth and die-off.</p> <p>The environmental checklist identifies that the project may result in potentially significant impacts because of the greenhouse gases that may be generated from the removal and disposal of the dead biomass. Since it is not within the Water Board’s authority to prescribe methods of biomass removal, one cannot assume that the project proponent will implement methods that generate the least greenhouse gases or none at all.</p> <p>CLI R5: In Chapter 4 of the Basin Plan (Attachment 2), the section titled, “Exemption Criteria for Controlling Aquatic Invasive Species (AIS) and Other Harmful Species” includes a criterion that requires the project proponent to submit and implement a plan detailing mitigation and management measures. The proposed language states, “The Plan should include measures to remove and dispose of dead biomass which are adequate to protect water quality and beneficial uses. (Removal of biomass may not be necessary in situations where recovering the dead biomass creates a greater potential to impact water quality.)” The last sentence in parenthesis was inadvertently omitted from relevant discussions (pages 38 and 53) in the environmental checklist. As suggested by the commenter, this language has been added (1) for consistency and (2) to acknowledge that due to potential impacts to water quality (and generation of greenhouse gases) it may be appropriate to leave dead biomass in place rather than harvest and dispose of it.</p>

Comments

Response

CLEAN LAKES INC.

potential greenhouses gasses that result from the decay of vegetation treated with aquatic herbicides would generally be the same gasses created on a seasonal basis when the plants decay each fall. Through the control of aquatic vegetation with herbicides, it would be expected that control would be initiated when the plants are in the early growth stage, and thus less decayed biomass would be present, and thus any greenhouse gases produced would be less than if the vegetation was allowed to grow and increase in biomass prior to fall dye back. This section should be modified as the vegetation decays on an annual basis, and no additional impact from greenhouse gas production would result from aquatic herbicide treatments.

Staff Report –Page 38, 7 a) and Page 53, Paragraph 1. The statement that, “The proposed project requires that dead biomass, a potential emission source, must be removed from the project area and disposed of at an appropriate location”, is unreasonable for all aquatic plant control programs. In some circumstances, such as in the control of emergent or floating vegetation, removal of dying or dead biomass is feasible. However, in the case of submersed aquatic plant control projects (i.e. Eurasian watermilfoil) collecting dead biomass is not feasible or practical since plants will fragment into small uncollectable pieces. The only practical way that dead biomass might be collected is through a dredging related activity that would likely cause greater impacts to native vegetation and higher levels of green house gases through the required use of combustion engine equipment. Selective control of invasive aquatic plants through use of aquatic herbicide applications would reduce long term organic material accumulation, as well as potential production of greenhouse gases, by eradicating or greatly reducing the invasive plant species. (See attached articles, Maintenance Control of Aquatic Plants by Bill Haller, Aquatics - Summer 1981; Benefits of Maintenance Control of Water Hyacinth by James Joyce. Aquatics – Winter 1985; Understanding Organic Accumulation of Selected Aquatic Plants in Florida by Dana Bigham. Aquatics – Fall 2009). This Eurasian watermilfoil biomass removal recommendation should be modified or deleted.

Attachment 2, Revised Draft Waste Discharge prohibition and Exemption Criteria, Page 8, 1 e. states the need for, “The chemical composition of the pesticide to be used, including inert ingredients.” Inert ingredients are thought to be considered proprietary or intellectual property. Board staff should clarify with pesticide manufacturers their ability to provide this information prior to finalizing this BPA.

Attachment 2, Revised Draft Waste Discharge prohibition and Exemption Criteria, Page 10, section 2. Under this paragraph which falls under Exemption criteria for controlling aquatic invasive species and other harmful species, time sensitive projects, it appears that the statement, “(Removal of biomass may not be necessary in situations where recovering the dead biomass creates greater potential impact to water quality)” is inconsistent with Staff Report Pages 18, 38, and 53 outlined above.

CLI R6: Inert ingredients are often trade secrets and therefore not always disclosed by the manufacturer. To protect proprietary information, the language in Chapter 4 of the Basin Plan (Attachment 2), the section titled, “Exemption Criteria for Aquatic Pesticide Use” has been modified to read, “The chemical composition of the pesticide to be used, including inert ingredients, if available from the manufacturer.”

CLI R7: Refer to Response CLI R5 on previous page. The appropriate language (as described in Response to CLI R5) has been added to pages 38 and 53 of the Staff Report so that these sections are consistent with the requirements in Attachment 2, Revised Draft Waste Discharge Prohibition and Exemption Criteria, page 10, section 2.

Comments

Response



Thank you for the opportunity to provide comments on the proposed Amendments.

Should you have any questions or require clarification regarding this letter, please contact Thomas Moorhouse via cell phone at 818-201-5982 or via email at tmoorhouse@cleanlake.com.

Sincerely,

CLEAN LAKES, INC.

Thomas G. Moorhouse
Aquatic Pest Control Advisor

Attachments:

- Maintenance Control of Aquatic Plants by Bill Haller, Aquatics - Summer 1981
- Benefits of Maintenance Control of Water Hyacinth by James Joyce. Aquatics – Winter 1985
- Understanding Organic Accumulation of Selected Aquatic Plants in Florida by Dana Bigham. Aquatics – Fall 2009

Refer to Clean Lakes Comment Letter to view the attachments at http://www.waterboards.ca.gov/lahtontan/water_issues/programs/basin_plan/comments111411/cleanlakes_comments.pdf

2150 Franklin Canyon Road
Martinez, California 94553
Phone: 925-766-8862 Fax: 925-957-1906

Response to Comments – November 23, 2011

Basin Plan Amendment - Pesticide Prohibition & Exemption Criteria

(Comment deadline 12 p.m., November 14, 2011)

General Public – B.J. Hodge

http://www.waterboards.ca.gov/lahtontan/water_issues/programs/basin_plan/comments111411/hodge_comments.pdf

Comments	Response
<p>November 14, 2011</p> <p>California Regional Water Quality Control Board Lahontan Region 2501 Lake Tahoe Blvd. South Lake Tahoe, CA 96150</p> <p><u>Re: Public Comment - Proposed Amendments to the Water Quality Control Plan for the Lahontan Region to Allow Pesticide Use in Lake Tahoe</u></p> <p>As a resident and homeowner in Tahoe Keys, and direct stakeholder who would be affected by proposed amendments referenced above, like many homeowners in the area I have concerns about the health effects of such pesticide and herbicide use in Lake Tahoe and its adjoining waters.</p> <p>My concerns include the close and immediately adjoining proximity to the Tahoe Keys water lagoons of the three Tahoe Keys water wells that provide potable water to the 1,500+ homes and businesses served by these wells and the possible effects that the introduction of herbicides or pesticides in these lagoons might have on these wells, located in a downward trajectory of the lagoons to be treated with these chemicals. Is there any chance of proposed herbicides so used affecting the water quality of these water wells?</p> <p>Another concern is the health of swimmers, boaters, paddleboarders, children, pets, and others using the Tahoe Keys lagoons for daily water recreation, including myself, family, guests, and pets. Are the pesticides proposed 100% safe for such contact and occasional ingestion?</p> <p>It is reasonable to ask that use of pesticides, herbicides, and other chemical treatments in Lake Tahoe and its adjoining waters be approved only upon study and certification by an unrelated, third-party, unbiased, disinterested, arms-length, certified lab that attests with no uncertainty that uses of such chemicals are 100% safe for human, animal, and wildlife contact and ingestion. Some households at Lake Tahoe receive their drinking water directly and untreated from the lake's shorelines. Lake Tahoe's status as an Outstanding National Resource justifies the need for extraordinary care, caution, and protection. It is reasonable to expect that a full Environmental Impact Study examining all aspects of this amendment change is in order, before such proposed amendments are enacted.</p> <p>Sincerely,</p> <p>B.J. Hodge 402 Wedeln Ct. South Lake Tahoe, CA 96150</p>	<p>BJH R1: There is a chance that the use of pesticides may affect the water quality of the Tahoe Keys wells. It is speculative to specify the chance, given the range of factors of influence associated with an individual project. A non-exhaustive list of these factors includes pesticide properties, ambient conditions, substrate, well depth, proximity, and pump rate. Project proponents are required to provide information on the pesticide proposed for use, including the chemical composition, fate and transport, and risks to water supplies. Proponents are also required to include water suppliers in their public notification plans, including any water use restrictions or precautions. Proponents will provide potable drinking water where necessary.</p> <p>BJH R2: It would be speculative to assert that the pesticides proposed are 100% safe for such contact, as the proposed amendment to the Basin Plan does not specify what pesticides may be used. Rather, it requires that project proponents disclose information to the Water Board, in accordance with the required criteria specified in Attachment 2 of the SED. The Water Board then retains discretion to approve or deny exemption requests. If approved, project proponents must provide notification to all potentially affected parties using the water for any beneficial use, including contact and non-contact recreation. Proponents must also follow a monitoring plan and mitigation plan to assure safe compliance with permit requirements, protect the public, and address potential impacts.</p>

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Response to Comments – November 23, 2011

Basin Plan Amendment - Pesticide Prohibition & Exemption Criteria

(Comment deadline 12 p.m., November 14, 2011)

**Greg Reed –
Round Hill General Improvement District
and Tahoe Water Suppliers Association – Letter 1**

http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/comments111411/greg_reed_cmnt_ltr_10272011.pdf)

Comments

From: Greg Reed <agreed@rhgid.org>
To: 'Daniel Sussman' <DSussman@waterboards.ca.gov>, 'Madonna Dunbar' <madonn...
Date: 10/27/2011 12:49 PM
Subject: RE: Request for Public Comment: Pesticide Amendment, Lahontan Water Board

Hi All:

I pulled this off the AWWA website this morning. I believe this should be included in the language for the basin plan amendment, if it hasn't been already. I would also hope that the requirements would be for individual NPDES permits and not a general permit. Please let me know if you have any questions.

Thanks,
Greg

NPDES permits needed for pesticide applications to US waters

10/21/2011

The U.S. Environmental Protection Agency and state Clean Water Act primacy agencies will require National Pollutant Discharge Elimination System permits as of October 31 for applications of pesticides to, over or near waters within their jurisdiction. Individual permits will be required if a general permit is not available.

This [permit requirement](#) stems from a 2009 decision by the Sixth Circuit Court of Appeals (*National Cotton Council, et al. v. EPA*) that vacated EPA's 2006 Final Rule on Aquatic Pesticides. Under that rule, NPDES permits were not required for applications of pesticides to U.S. waters.

This action is relevant to permit requirements for water system activities such as the application of algaecides to reservoirs, the application of herbicides to control aquatic plant growth, and the application of pesticides adjacent to water bodies where pesticides residuals enter the water.

EPA plans to finalize a general permit for pesticides on October 31 and post it on the agency website (it will later be published in the *Federal Register*). The general permit will be effective only where EPA is the NPDES permitting authority. Forty-four states have primacy for NPDES permitting and are responsible for issuing NPDES permits for pesticide discharges in their respective jurisdictions.

At this time, AWWA understands 36 states expect to have a NPDES pesticide permit structure in place by October 31. Individual states are responding to this court decision differently. Water systems should contact their state agencies responsible for NPDES permitting to understand state-specific requirements.

ROUND HILL GENERAL IMPROVEMENT DISTRICT

A. Gregory Reed
District Manager
P.O. Box 976
Zephyr Cove, NV 89448
E-mail: agreed@rhgid.org
Office: 775-588-2571
Cell: 775-901-0920

Response

GR R1:

From: Mary Fiore-Wagner
To: Dunbar', 'Madonna; Pomroy, Joe; Rebecca_sawyer@ivgid.org; Reed, Greg;...
Date: 10/27/2011 4:37 PM
Subject: RE: Request for Public Comment: Pesticide Amendment, Lahontan Water Board
CC: Booth, Richard; Sussman, Daniel

Greg,
Thank you for staying involved with the amendment and the current requirements for aquatic pesticide discharges.

Can you please provide more clarification about what you are referring to when you state "this should be included in the language for the basin plan amendment, if it hasn't been already." I am uncertain what you want included, but it is a requirement that water system activities that use aquatic pesticides be required to obtain an exemption. As currently written, the proposed amendment language would require a prohibition exemption **and** the appropriate permit to regulate discharges of aquatic pesticides. This requirement includes discharges associated with water system activities such as the application of algaecides to reservoirs, the application of herbicides to control aquatic plant growth, and the application of pesticides adjacent to water bodies where pesticides residuals enter the water.

As you are aware, in California, the EPA has designated the state as the NPDES permitting authority. The State Water Resources Control Board (State Water Board) has recently revised and/or developed NPDES permits to regulate applications of pesticides to, over or near waters within California for purposes of vector control, aquatic invasive animal control, and spray applications. The State Water Board also has a permit that regulates the discharge of aquatic pesticides for aquatic weed control; I believe the State Water Board intends to update this NPDES permit for weed control within the next year. Please view the State Water Board's NPDES permits that apply to aquatic pesticide discharges which are available at http://www.waterboards.ca.gov/water_issues/programs/npdes/aquatic.shtml.

Water system activities within the Lahontan Region that propose to use aquatic pesticides for control of algae and weeds that impact source, storage, and/or conveyance systems would need to obtain both a prohibition exemption from the Lahontan Water Board and an appropriate permit. (For water system activities mentioned above, the Lahontan Water Board would likely rely on the State Water Board's existing NPDES permit for weed control to regulate these discharges.)

Obtaining an exemption to the prohibition alone does not give a project proponent the authorization to discharge; a permit is also required. The Water Board would likely rely on the NPDES permits that the State Water Board has developed to regulate aquatic pesticide discharges, but there may be cases where an individual permit would be issued by the Lahontan Water Board. If needed, the resolution granting the exemption could specify additional conditions that the project proponent would have to include in its project such as mitigation measures and monitoring.

Please contact me if you need more clarification with this response. Thank you.

Please note: I work a reduced time base with every Friday off.

Mary Fiore-Wagner
Environmental Scientist
CRWQCB-Lahontan Region

Response to Comments – November 23, 2011

Basin Plan Amendment - Pesticide Prohibition & Exemption Criteria

(Comment deadline 12 p.m., November 14, 2011)

**Greg Reed –
Round Hill General Improvement District
and Tahoe Water Suppliers Association – Letter 2**

http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/comments111411/greg_reed_cmnt_ltr_10312011.pdf

Comments

Response

From: Greg Reed <agreed@rhgid.org>
To: 'Mary Fiore-Wagner' <MFWagner@waterboards.ca.gov>, 'Joe Pomroy' <Joe_Pomroy@waterboards.ca.gov>
Date: 10/31/2011 12:55 PM
Subject: RE: Request for Public Comment: Pesticide Amendment, Lahontan Water Board
CC: 'Daniel Sussman' <DSussman@waterboards.ca.gov>, 'Richard Booth' <RBooth@waterboards.ca.gov>

Hi Mary:
 Thanks for your response. In addition to the exemption from the Lahontan Board, I was hoping that a prospective applicator would have to obtain an individual NPDES permit rather than relying on a blanket permit.
 Thanks,
 Greg

ROUND HILL GENERAL IMPROVEMENT DISTRICT
 A. Gregory Reed
 District Manager
 P.O. Box 976
 Zephyr Cove, NV 89448
 E-mail: agreed@rhgid.org
 Office: 775-588-2571
 Cell: 775-901-0920

GR2 R1:

From: Mary Fiore-Wagner
To: Dunbar, 'Madonna'; Pomroy, 'Joe'; Rebecca_sawyer@ivgid.org; Reed, Greg
Date: 10/31/2011 1:39 PM
Subject: RE: Request for Public Comment: Pesticide Amendment, Lahontan Water Board
CC: Booth, Richard; Sussman, Daniel

Greg,
 A prospective applicator **would need** to obtain an appropriate permit in addition to the exemption. Depending on the nature of the proposed project, a project proponent would be issued one of the following to regulate the discharge of aquatic pesticides: (1) a Statewide General NPDES Permits for aquatic pesticide use http://www.waterboards.ca.gov/water_issues/programs/npdes/aquatic.shtml, (2) Regional Board issued individual or general NPDES permit, (3) a waiver of Waste Discharge Requirements, or (4) individual Waste Discharge Requirements.

We anticipate relying on the Statewide NPDES Permits whenever appropriate, since developing an individual permit is duplicative when one already exists. Staff acknowledge that there will situations in which it will be necessary to develop an individual permit, because the project does not fit the intent of the Statewide NPDES permits (i.e., eligible circumstances, aquatic pesticide proposed). Please let me know if I can provide further clarification. Thank you.

Please note: I work a reduced time base with every Friday off.

Mary Fiore-Wagner
 Environmental Scientist
 CRWQCB-Lahontan Region
 phone (530) 542-5425
 fax (530) 544-2271
 email: mfwagner@waterboards.ca.gov

