



California

Public Employees for Environmental Responsibility

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December 14, 2009

Forest Activities Program Manager
Division of Water Quality
State Water Resources Control Board
1001 I Street
P.O. Box 2231
Sacramento, CA 95812
ForestPlan_Comments@waterboards.ca.gov

By Electronic Mail

Dear Mr. Gaylon:

Public Employees for Environmental Responsibility (PEER) is a non-profit 501(c)3 organization based in Washington DC, with Field Offices around the country, including one in California. PEER, on behalf of public employees that work for both Federal and State agencies, has been an active proponent for practices that protect and enhance California's water, for a variety of beneficial uses. We submit the following comments on the State Water Board's proposal for updating the United States Forest Service Water Quality Management Agreement.

We incorporate by reference here the comments made by John Buckley on behalf of Central Sierra Environmental Resource Center, and take this opportunity to offer further evidence of the failure of Best Management Practices and the current USFS Water Quality Management Agreement to protect beneficial uses of water.

The purpose of this letter is to further document the failure of the Forest Service to implement BMP's and/or Waiver Conditions, resulting in significant impacts to water quality. We believe the State Board would be making a serious mistake if it further streamlines the USFS Water Quality Management Plan. As you will see from the two examples below, the existing WQMP is failing to protect water quality. Any changes to the WQMP should include tighter monitoring and reporting requirements, and ensure on-the-ground implementation of water quality protection practices.

The photos below show a designated OHV crossing, designated by the Eldorado National Forest.



Approach to Rock Creek Crossing, Eldorado NF



Bottom of approach to Rock Creek Crossing, Eldorado NF



Bottom of approach to Rock Creek Crossing, Eldorado NF



Lower Rock Creek Crossing, Eldorado NF

Also, below is a Notice of Violation filed by the Lahontan Regional Water Board to the Tahoe Basin for the Angora Hazard Tree Removal project:


Linda S. Adams
Secretary for
Environmental Protection

California Regional Water Quality Control Board
Lahontan Region

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
www.waterboards.ca.gov/lahontan


Arnold Schwarzenegger
Governor

October 19, 2009

Terri Marceron
US Forest Service - LTBMU
35 College Drive
South Lake Tahoe, CA 96150

CERTIFIED MAIL: 7008 1300 0001 6173 2258

IN THE MATTER OF VIOLATION OF LAHONTAN)
WATER RESOURCES CONTROL BOARD)
RESOLUTION R6T-2007-008, WAIVER OF WASTE)
DISCHARGE REQUIREMENTS FOR DISCHARGES)
RELATED TO TIMBER HARVEST AND)
VEGETATION MANAGEMENT ACTIVITIES ISSUED)
TO THE US FOREST SERVICE – LTBMU AND)
THE WATER QUALITY CONTROL)
PLAN FOR THE LAHONTAN REGION)
EL DORADO COUNTY, WDID NO. 6AT50908027)

**NOTICE OF
VIOLATION**

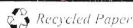
The purpose of this letter is to inform you that you are in violation of: (1) the Lahontan Water Resources Control Board Resolution R6T-2007-008, Waiver of Waste Discharges Related to Timber Harvest and Vegetation Management Activities issued to the US Forest Service – LTBMU for the Angora Hazard Tree Removal Project (hereafter referred to as the "Timber Waiver"); and (2) the Water Quality Control Plan for the Lahontan Region (Basin Plan). The US Forest Service is the land owner and responsible party for the Angora Hazard Tree Removal Project; therefore, the US Forest Service is responsible for ensuring compliance with both the Timber Waiver and the Basin Plan.

Background

On July 2, 2008, you submitted a Notice of Intent to comply with the terms of the Timber Waiver for the Angora Hazard Tree Removal Project (hereafter referred to as the "Project"). The Basin Plan requires you to winterize (i.e., stabilized or protected to prevent soil movement) all project sites by October 15 as a condition of continuing work.

On October 14, 2009, Water Board staff received a grading season exception request ("variance request") for the Project from the LTBMU dated October 9, 2009. The variance was requested to allow the LTBMU to continue log skidding and chipping past the October 15 grading deadline. The variance request requires certification under penalty of law that the "project site will be fully winterized in accordance with waste

California Environmental Protection Agency



discharge requirements by October 15, 2009." The variance request was certified via signature by LTBMU staff; however, the Project was not winterized in accordance with waste discharge requirements (i.e., the Timber Waiver) on October 15, 2009. Due to Project area and weather conditions, no variance request was granted for the Project to continue soil disturbance work, other than for the purposes of winterization. On October 15, 2009 permission was granted to conduct winterization work only.

Water Board staff inspected Project sites on October 13, 2009 and October 15, 2009, and observed very few Best Management Practices (BMPs) implemented, and many areas of disturbed soil that were not winterized. No waterbars had been installed on roads used for the project with the exception of a few pre-project waterbars. A temporary stream crossing and road which were to be removed or decommissioned by October 15 were still in place. Approximately 1.5 inches of rain occurred October 13 & 14, 2009. Staff observed sediment-laden stormwater discharges from the disturbed soils on the project sites into Angora Creek on October 13, 2009. Angora Creek is a tributary to Lake Tahoe and is both a water of the State and water of the US. Lake Tahoe is an Outstanding National Resource Water, and is included on the Clean Water Act section 303(d) list of impaired waterbodies. Fine sediment and nutrients are the pollutants impairing Lake Tahoe.

On October 15, 2009, Water Board staff discussed BMP implementation procedures with an LTBMU Project inspector and watershed specialist. Water Board staff were attempting to gain insight on how LTBMU BMP requirements contained in the Project's Decision Memo (prepared pursuant to the National Environmental Policy Act [NEPA]), were translated into on-the-ground actions. Specifically, Water Board staff inquired about the process which LTBMU staff and contractors follow to implement project requirements, including the selection, timely implementation, inspection, and maintenance of BMPs, and who was responsible for ensuring this process was met. Neither LTBMU employee could articulate the process.

Violation – Basin Plan Grading Deadline

Lahontan Regional Water Quality Control Board Resolution No. R6T-2007-0008, Attachment A: Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest and Vegetation Management Activities includes General Conditions I.B.1. which states:

"The discharger must comply with all requirements of applicable water quality control plans..."

The Water Quality Control Plan for the Lahontan Region (Basin Plan), Chapter 5, Water Quality Standards and Control Measures for the Lake Tahoe Basin, Subchapter 5.3, Best Management Practices, states:

"...BMP which both the Regional Board and TRPA require to be implemented is the regional grading deadline...All project sites must be adequately winterized by October 15..."

Due to rainfall on October 13 and 14, and the resulting saturated soil conditions, Project areas were not accessible by grading equipment needed to construct erosion control measures following the storm. In order to meet the October 15 grading deadline, erosion control structures needed to be completed **prior** to the October 13, 2009 storm.

Refer to enclosed photos 1-4, showing lack of erosion control measures on Project sites on October 13, 2009. An inspection by staff members of the Water Board and the Tahoe Regional Planning Agency on October 15, 2009, revealed that the site was not winterized at that time, in violation of the Basin Plan.

Violation – Basin Plan Waste Discharge Prohibition

The Water Quality Control Plan for the Lahontan Region (Basin Plan), Chapter 5, Water Quality Standards and Control Measures for the Lake Tahoe Basin, Subchapter 5.2, Waste Discharge Prohibitions, states:

"The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to surface waters of the Lake Tahoe Basin, is prohibited."

Inspections conducted on October 13 and 14 revealed sediment discharges into Angora Creek and its tributaries from roads and landings in the Project area due to lack of erosion control structures. Refer to photos 4-6 showing sediment-laden stormwater discharging into Angora Creek from a road in the Project area. No waterbars or other stormwater control measures were installed to prevent the discharge.

Violation – Timber Waiver

Lahontan Regional Water Quality Control Board Resolution No. R6T-2007-0008, Attachment A: Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest and Vegetation Management Activities includes General Conditions I.B.1, which states:

"The discharger shall conduct timber harvest activities . . .in accordance with the final environmental document prepared pursuant to the National Environmental Policy Act (NEPA) and decision document for timber harvest activities on federal lands."

The Decision Memo for Implementation of the Angora Hazard Tree Removal Project (3-21-08), Appendix B – Summary of Best Management Practices (BMP) for the LTBMU Angora Hazard Tree Removal Project includes BMP 1-13: Erosion Prevention & Control Measures During Timber Sale Operations. BMP 1-13 states:

"Erosion control work shall be completed by the grading deadline (i.e., October 15 or another date identified in a grading extension)."

Additional detail regarding BMPs for erosion control is contained in the Decision Memo Appendix B. BMP 1-16 states that "all landings will be ditched and outslowed for proper drainage" BMP 1-17 states that "drainage dips will be installed on haul routes and main skid trails at an average spacing of 150 linear ft." Refer to photos 1-7 in Appendix A, showing lack of erosion control structures in the Project area.

On August 5, 2009, a Project modification, which amended the Decision Memo, was agreed to by Water Board and LTBMU staff regarding the method of stream crossing in Unit 5 at crossing 11 on Angora Creek. The Project modification document states:

"The crossing will be removed prior to October 15, unless otherwise agreed upon between the LTBMU and Lahontan staff."

Refer to Photo 7, taken on October 15, 2009, showing the crossing 11 on Angora Creek in place. An email received on October 13, 2009 from LTBMU staff states that "Crossing 11 is still in as there are still logs in the Seneca Pond landing that still need to be chipped."

On September 1, 2009, a Project modification, which amended the Decision Memo, was agreed to by Water Board and LTBMU staff to allow the construction of a new, temporary road in the Project area in Unit 5 near Mule Deer Drive. The Project's Timber Sale Contract #211729 was amended to reflect this agreement, and states:

"The road shall be decommissioned by October 15, 2009, unless a variance to the October 15 soil disturbance prohibition date is granted."

An email received on October 13, 2009 from LTBMU staff indicates that the temporary road has not been decommissioned.

During the week of October 5-9, 2009, The National Weather Service predicted a rain event for October 12 and 13, 2009. The storm was forecast to result in rainfall amounts of up to 3 inches. On October 12, 2009, the National Weather Service was predicting a 100% chance of heavy rain. The Decision Memo for Implementation of the Angora Hazard Tree Removal Project (3-21-08), Appendix B – Summary of Best Management Practices (BMP) for the LTBMU Angora Hazard Tree Removal Project includes BMP 1-13: Erosion Prevention & Control Measures During Timber Sale Operations. BMP 1-13 states:

"Erosion control measures will be kept current, which means daily, if precipitation is likely, or at least weekly, when precipitation is predicted."

As demonstrated in the enclosed photos, erosion control measures were not installed, despite National Weather Service forecasts of the October 13, 2009 storm event.

Action Needed

You are subject to enforcement action for the aforementioned failures to comply with the Timber Waiver and the Basin Plan. Future enforcement actions may be taken for continued non-compliance. The quality and speed of actions you take to restore compliance will be considered in the type and extent of enforcement actions we will pursue.

With that background, I request you to:

1. **Immediately** cease any and all new soil disturbance activities. You are only authorized to **stabilize** areas already disturbed by Project activities.
2. To completely stabilize all disturbed soils on Project sites by **October 23, 2009**, including decommissioning roads, trails, and removing temporary crossings as described in the Decision Memo and project documents which may amend the Decision Memo.
3. Decommission the former primary access road at the Seneca Drive entrance to Unit 5 by **October 23, 2009**.
4. Submit a report to the Lahontan Water Board by **October 30, 2009**, which describes and documents the completion of site stabilization activities per identified project area. Documentation must include photo documentation.

Please contact Anne Holden at (530) 542-5450, or me at (530) 542-5436, if you have any questions regarding this matter.



LAURI KEMPER, P.E.
Supervising Water Resource Control Engineer
North Lahontan Watersheds Division

Enclosure: Photos 1-7

cc (with enclosure): Lahontan Water Board members
TRPA/Nicole Rinke, Joanne Marchetta, Brian Hirt
USEPA/Jack Landy
USFS Regional Office/Randy Moore
USFS Regional Forester's Representative/Mike Chapel
State Water Board/Dorothy Rice

Photo 2: Forest Road 17E49, north of Seneca Pond in Unit 5 on October 15, 2009. No erosion control structures are installed.



Photo 3: Landing near Seneca Pond in Unit 5 on October 13, 2009. Note lack of erosion control structures. Stormwater was running from landing, down road to discharge into Angora Creek (see Photo 4).



Photo 5: Sediment-laden stormwater discharging from road and crossing 11 into Angora Creek. No erosion control structures are installed.



Photo 6: Sediment-laden stormwater discharge entering Angora Creek from road and crossing.



Photo 7: Crossing 11 on Angora Creek still in place on October 13, 2009. Due to increased streamflow and saturated soils, crossing 11 is still in place on October 15, 2009.



We believe these photos speak volumes about the need for a WQMP that provides better protection of water quality on USFS lands in California. The State Board's primary interest should be the protection of water quality, not expediting Forest Service projects.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Karen Schambach". The script is cursive and fluid.

Karen Schambach
California Field Director