

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2008- 0031

CLARIFYING AND EXPANDING PRIOR DELEGATION OF AUTHORITY TO THE EXECUTIVE OFFICER TO GRANT EXEMPTIONS AND EXCEPTIONS TO BASIN PLAN PROHIBITIONS

WHEREAS, The California Regional Water Quality Control Board, Lahontan Region (Water Board) finds that:

1. Water Code section 13223 states that each regional board may delegate any of its powers and duties vested in the regional board to its executive officer excepting only the following: (1) the promulgation of any regulation; (2) the issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement; (3) the issuance, modification, or revocation of any cease and desist order; (4) the holding of any hearing on water quality control plans; and (5) the application to the Attorney General for judicial enforcement but excluding cases of specific delegation in a cease and desist order and excluding cases described in subdivision (c) of Section 13002 and Sections 13304 and 13340 of the Water Code.
2. The Water Board, in Resolution No. 6-90-72, has previously delegated to its executive officer all powers and duties except for the five listed in Finding No. 1 above and a few additional powers and duties, none of which related to granting exemptions or exceptions to Basin Plan prohibitions.
3. The Water Quality Control Plan for the Lahontan Region (Basin Plan) contains a number of prohibitions of discharge of waste. In addition, the Basin Plan includes criteria for the granting of exemptions and exceptions to many of these prohibitions. Historically, the Water Board has been operating under the premise that, notwithstanding the delegation in Resolution No. 6-90-72, its executive officer could only grant exemptions or exceptions when the Water Board specifically delegated that authority. Under this premise, the Water Board delegated authority to its executive officer to grant exemptions and exceptions under some of the criteria specified in the Basin Plan.
4. Consistent with Water Code section 13223 and prior delegation resolutions of the Water Board (e.g. Resolution No. 6-90-72), a more appropriate interpretation of the Water Board's prior delegation of powers and duties to its executive officer includes the authority to grant any exemption or exception provided for in the Basin Plan. This interpretation is more appropriate because such authority was not specifically withheld either in a prior Water Board resolution or in the Basin Plan. Therefore, under this interpretation, it is not necessary for the Water Board to make any further delegation. Rather, if the Water Board chose to retain the sole authority to grant specific exemptions or exceptions, it would need to modify its delegation.

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5. The Water Board's delegation as noted in Finding No. 1 and its duplicative delegation of authority to grant limited Basin Plan exemptions or exceptions as noted in Finding No. 3 may create uncertainty as to the precise intent of the Water Board.
6. The Water Board intends to review all of the exemptions and exceptions provided for in the Basin Plan to determine if it may choose to retain authority to grant certain exemptions or exceptions. However, until it conducts this review, the Water Board, in this Resolution, is clarifying its prior intent to delegate to its executive officer the ability to grant exemptions or exceptions to prohibitions in the Basin Plan.
7. Water Code section 13260, subdivision (a) requires that any person discharging waste or proposing to discharge waste within the Region, other than to a community sewer system, that could affect the quality of the waters of the state, shall file a report of waste discharge.
8. The Water Board has a statutory obligation to prescribe waste discharge requirements for the discharge of any waste that could affect water quality except that waste discharge requirements may be waived when it is consistent with any applicable state or regional water quality control plan and is in the public interest pursuant to Water Code section 13269.
9. Many projects that would qualify for an exemption or exception would normally be permitted under an existing general permit, waiver of waste discharge requirements or water quality certification order.
10. The Water Board finds that delegating authority to the executive officer to grant the exemptions or exceptions to the prohibitions in the Basin Plan when the project can be otherwise authorized by the executive officer (e.g. general permit, general waiver, or water quality certification order) would enable Water Board staff to use resources more effectively.
11. The Water Board finds that delegation of authority to grant exemptions or exceptions can allow qualifying projects to proceed in a more timely manner.
12. The Water Board finds that delegating authority to the executive officer to grant exemptions to the Basin Plan prohibitions specified in the Attachment to this Resolution would not be against the public interest when the discharge is mitigated as required by the Basin Plan, and will not adversely affect the quality or the beneficial uses of the waters of the State.
13. A Report of Waste Discharge or project description shall be filed for any discharge for which approval is sought pursuant to this Resolution.
14. Discharge from a project cannot commence until such time as the Water Board executive officer has prepared and sent a letter to the applicant indicating that an

exemption or exception to the Basin Plan prohibitions is granted and that either (1) General Waste Discharge Requirements, a General NPDES permit, or general waiver of waste discharge requirements are applicable, or (2) a Water Quality Certification order is granted.

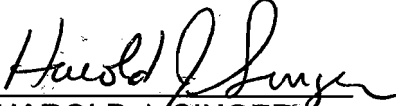
15. The authority of the Water Board to delegate to its executive officer to grant exemptions or exceptions to Basin Plan prohibitions is consistent with the delegation authority provided by the Water Board to its executive officer pursuant to Water Code section 13223.

THEREFORE BE IT RESOLVED:

1. The Water Board withdraws its delegation of authority to its executive officer to grant exemptions or exceptions to Basin Plan Prohibitions other than as specifically granted in prior resolutions of the Water Board or as specifically listed in the Basin Plan.
2. The Water Board delegates authority to its executive officer to grant exemptions to the Basin Plan prohibitions listed in Attachment 1 for the Lake Tahoe, Truckee River or Little Truckee River Hydrologic Units and for specific discharges where:
 - a. The executive officer has the authority to authorize the project under an existing general permit, general waiver or under individual water quality certification order, excluding projects that require a Board action; and
 - b. The project meets the exemption or exception criteria set forth in the Basin Plan; and
 - c. The project is necessary for public health, safety, or environmental protection; or
 - d. The project's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution; or
 - e. The project is a repair or replacement of existing facilities; or
 - f. The project is a bridge abutment, approach or an essential transportation facility; or
 - g. The public recreation project is within the following specific size limitations:
 - less than 2000 square feet of new ground disturbance, and
 - less than 100 cubic yards of fill or excavation.
3. Except in emergency situations, the executive officer shall notify the Board and interested members of the public of his intent to issue an exemption or exception subject to this Resolution at least ten (10) days before the exemption or exception is issued. A notice of exemption will also be posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments. Any Water Board member may direct that an exemption not be granted by the executive officer and that it be scheduled for consideration by the Water Board. Additionally, in response to public comment or for any other reason, the executive officer may chose to bring the issuance of the exemption or exception to the Water Board for its consideration.

4. A Report of Waste Discharge or project description shall be filed for any discharge for which approval is sought from the executive officer. Discharge from a project cannot commence until such time as the Water Board executive officer has prepared and sent a letter to the applicant indicating that an exemption to the Basin Plan prohibition is granted and that either (1) waste discharge requirements for the project are waived, (2) General Waste Discharge Requirements or General NPDES permits are applicable, or (3) Water Quality Certification order is granted. The Water Board's action delegating authority to the executive officer to grant an exemption or exception is conditional and the executive officer may recommend that certain exemption requests be considered by the Water Board.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on July 24, 2008.


HAROLD J. SINGER
EXECUTIVE OFFICER

Attachment 1: Excerpts from the Basin Plan

**Attachment No. 1
EXCERPTS FROM THE BASIN PLAN**

Chapter 4, Section 4.1 and Chapter 5, Section 5.2

Discharge Prohibitions for the Truckee River and Little Truckee River or any tributary to the Truckee River or Little Truckee River:

Section 4.1 - 4: Little Truckee River

4. (c). The discharge or threatened discharge attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to lands within the 100-year floodplain of the Little Truckee River or any tributary to the Little Truckee River.

Section 4.1 -6: Truckee River

4. (c). The discharge or threatened discharge attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River.

Section 5.2 – 6: Truckee River (between the Lake Tahoe Dam and the confluence of the Truckee River with Bear Creek)

10. The discharge or threatened discharge attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River.

The Basin Plan allows an exemption to the above three prohibitions for:

... repair or replacement of existing structures, provided that the repair or replacement does not involve the loss of additional floodplain area or volume.

The Basin Plan also allows an exemption to the three prohibitions cited above for the Lake Tahoe (where the land is not also a Stream Environment Zone), Truckee River and Little Truckee River Hydrologic Units for only the following categories of new projects:

- (1) Projects solely intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas
- (2) Bridge abutments, approaches, or other essential transportation facilities identified in an approved general county plan

- (3) Projects necessary to protect public health or safety or to provide essential public services
- (4) Projects necessary for public recreation
- (5) Projects that will provide outdoor public recreation within portions of the 100-year floodplain that have been substantially altered by grading and/or filling activities which occurred prior to June 26, 1975.

The Basin Plan allows an exemption to the three prohibitions listed above only when the Water Board makes all of the following findings:

- The project is included in one or more of the five categories listed above
- There is no reasonable alternative to locating the project or portions of the projects within the 100-year floodplain
- The project, by its very nature, must be located within the 100-year floodplain. The determination of whether a project, by its very nature, must be located in a 100-year floodplain shall be based on the type of project proposed, not the particular site proposed. Exemptions for projects such as recreational facility parking lots and visitor centers, which by their very nature do not have to be located in a 100-year floodplain, will not be allowed in areas that were not substantially altered by grading and/or filling prior to June 26, 1975.
- The project incorporates measures which will insure that any erosion and surface runoff problems caused by the project are mitigated to levels of insignificance.
- The project will not, individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.
- The project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions. This shall be ensured by restoration of previously disturbed areas within the 100-year floodplain within the project site, or by enlargement of the floodplain within or as close as practical to the project site. The restored, new or enlarged floodplain shall be of sufficient area, volume, and wetland value more than offset the flood flow attenuation capacity, surface flow treatment capacity and ground water flow treatment capacity lost by construction of the project. This finding will not be required for: (1) essential public health or safety projects, (2) projects to provide essential public services for which the Regional Board finds such mitigation measures to be infeasible because the financial resources of the entity proposing the project are severely limited, or (3) projects for which the Regional Board finds (based on evidence presented by the proposed discharger) that the project will not reduce the flood flow attenuation capacity, the surface

flow treatment capacity, or the ground water flow treatment capacity from existing conditions.

Chapter 5, Section 5.2

Section 5.2 – 4: Discharge Prohibitions for the Lake Tahoe Hydrologic Unit

12. The discharge or threatened discharge, attributable to new development in Stream Environment Zones or which is not in accordance with land capability, of solid or liquid waste, including soil, silt, sand, clay, or other organic or earthen materials, to ground or surface waters in the Lake Tahoe Basin is prohibited.
13. The discharge or threatened discharge, attributable to new development in Stream Environment Zones, of solid or liquid waste, including soil, silt, sand, clay, rock, metal, plastic, or other organic or earthen materials, to Stream Environment Zones in the Lake Tahoe Basin is prohibited.

The Basin Plan allows an exemption to Prohibitions 12 and 13 and states that these prohibitions shall not apply to any structure the Water Board approves as reasonably necessary;

- for erosion control projects, habitat restoration projects, wetland rehabilitation projects, SEZ restoration projects, and similar projects, programs, and facilities,
- to carry out the 1988 TRPA regional transportation plan,
- for health, safety, or public recreation,
- for access across SEZs to otherwise buildable parcels

The Water Board may grant exemptions from the discharge prohibitions 12 and 13 (listed above) for new development in excess of the land capability system limits on Class 1a, 1c, 2 or 3 lands only under the following circumstances:

- For public outdoor recreation facilities, when all of the following findings can be made:
 - (a) The project, by its very nature, must be sited in Land Capability Districts 1a, 1c, 2 or 3, such as a ski run or hiking trail.
 - (b) There is no feasible alternative which avoids or reduces the extent of excess coverage in Land Capability Districts 1a, 1c, 2, or 3, and
 - (c) The impacts of the new development are fully mitigated through means including, but not limited to, application of BMPs and restoration of land in Land Capability Districts 1a, 1c, 2, and 3 in the amount of 1.5 times the area of land in such districts disturbed beyond the limits of the land capability system.
- For public service facilities, when all of the following findings can be made:

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- (a) The project is necessary for public health, safety, or environmental protection,
 - (b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of excess coverage in land capability Districts 1a, 1c, 2 and 3, and
 - (c) The impacts of new development are fully mitigated through means including, but not limited to, application of BMPs and restoration of land in land capability Districts 1a, 1c, 2, and 3.
- For erosion control projects, habitat restoration projects, wetland rehabilitation projects, Stream Environment Zone restoration projects, and similar projects, programs and facilities, when all of the following findings can be made:
 - (a) The project, program or facility is necessary for environmental protection, and
 - (b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in land capability Districts 1a, 1c, 2, and 3.

The Water Board shall grant exemptions to the prohibitions 12 and 13 (as listed above) against discharges or threatened discharges attributable to new development or permanent disturbance in SEZs only under the following circumstances:

- For public outdoor recreation facilities if all of the following findings can be made:
 - (a) The project by its nature must be sited in a Stream Environment Zone (in making this determination the Regional Board should use the criteria in Table 5.7-3);
 - (b) There is no feasible alternative which would reduce the extent of SEZ encroachment;
 - (c) Impacts are fully mitigated; and
 - (d) SEZs are restored in an amount 1.5 times the area of SEZ disturbed or developed for the project.
- For public service facilities if all of the following findings can be made:
 - (a) The project is necessary for public health, safety or environmental protection;
 - (b) There is no reasonable alternative, including spans, which avoids or reduces the extent of encroachment;
 - (c) The impacts are fully mitigated; and
 - (d) SEZ lands are restored in an amount 1.5 times the area of SEZ developed or disturbed by the project.
- For projects which require access across SEZs to otherwise buildable sites if all of the following findings can be made:
 - (a) There is no reasonable alternative which avoids or reduces the extent of encroachment;
 - (b) Impacts are fully mitigated; and

- (c) SEZ lands are restored in an amount 1.5 times the area of SEZ disturbed or developed by the project.
- For new development in man-modified SEZs after the Regional Board has reclassified them according to the procedure described in the section of this Chapter on land capability.
- For erosion control projects, habitat restoration projects, wetland rehabilitation projects, Stream Environment Zone restoration projects, and similar projects, programs, and facilities, if all of the following findings can be made:
 - (a) The project, program, or facility is necessary for environmental protection;
 - (b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in the Stream Environment Zone; and
 - (c) Impacts are fully mitigated.