

Lahontan Regional Water Quality Control Board

MINUTES

May 10-11, 2017

Regular Meeting

The Board is conducting this meeting using teleconference equipment that will permit Board members to participate from the two locations shown below:

Lahontan Water Board Annex, Hearing Room
971 Silver Dollar Avenue
South Lake Tahoe, California 96150

Lahontan Regional Water Quality Control Board
15095 Amargosa Road, Bldg 2, Suite 210
Victorville, California 92394

Board Members Participating

Peter C. Pumphrey, Chair, Bishop
Don Jardine, Vice Chair, Markleeville
Kimberly Cox, Helendale
Keith Dyas, Rosamond
Eric Sandel, Truckee
Amy Horne, Ph.D., Truckee

Board Members Absent

Legal Counsel

Elizabeth Beryt, Office of Chief Counsel, State Water Resources Control Board

Regional Board Staff Participating

Patty Z. Kouyoumdjian, Executive Officer
Lauri Kemper, Assistant Executive Officer
Patrice Copeland, Sup. Engineering Geologist
Mike Coony, WRCE
Jim Carolan, Engineering Geologist
Ed Hancock, Scientific Aid
Alan Miller, Senior WRCE
Cathe Pool, Senior WRCE
Eric Taxer, WRCE
Bruce Warden, Environmental Scientist
Linda Stone, Engineering Geologist
Lisa Scorallo, Engineering Geologist
Kathy Otermat, Executive Assistant

Scott Ferguson, Sup. WRCE
Douglas Smith, Sup. Engineering Geologist
Jeff Brooks, Engineering Geologist
Jay Cass, Senior WRCE
Mary Fiore-Wagner, Sr. Env. Scientist
Anne Holden, Engineering Geologist
Rebecca Phillips, AGPA
Laurie Scribe, Environmental Scientist
Rob Tucker, WRCE
Dan Sussman, Environmental Scientist
Tammy Lundquist, Eng. Geologist
Michelle Avila, Office Technician

State Board Staff Participating

Lori Okun, Office of Chief Counsel

Nickolaus Knight, Office of Enforcement

REGULAR MEETING: May 10, 2017 - 7:00 p.m.

To view the full Agenda and listen to the audio of this meeting [CLICK HERE](#).

Call to Order and Introductions

Chair Pumphrey called the meeting to order at 6:57 p.m. on May 10, 2017 and introduced Board Members. Patty Z. Kouyoumdjian, Executive Officer, introduced Legal Counsel and Water Board Staff. Note: Members Cox and Dyas attended via videoconference from the South Lahontan office, 15095 Amargosa Road, Bldg. 2, Suite 210, Victorville, California.

1. Public Forum

None.

2. Minutes

Motion: Moved by Member Sandel and seconded by Member Horne to approve the April 2017 Minutes as presented. The Chair called for a Roll Call Vote and the motion carried per the following votes:

The motion *carried* per for the following votes:

Member Cox	aye
Member Dyas	aye
Member Horne	aye
Member Sandel	aye
Chair Pumphrey	aye
Vice-Chair Jardine	aye

Click here to view adopted [April 2017 Meeting Minutes](#).

3. Consideration of a Stipulated Agreement with the United States Forest Service (USFS), Lake Tahoe Basin Management Unit to Comply with the Water Quality Control Plan for the Lahontan Region, Meeks Bay Marina.

Ms. Lauri Kemper, Assistant Executive Officer, represented the Prosecution Team. She introduced Mr. Neil Mortimer, Chairman, and Ms. Jean Mortimer, Counsel, from the Washoe Tribe, special guests who are not part of the agreement. However, the Washoe Tribe operates the resort at Meeks Bay. Ms. Kemper also introduced members of the parties who worked on the settlement agreement starting with the USFS Lake Tahoe Basin Management Unit: Jeff Marsolais, USFS Supervisor; Theresa McClung, Deputy Forest Supervisor; Heather Knowle, Public Affairs; and from the Lahontan Water Board staff: Eric Taxer, the lead enforcement staff; Cathe Pool, Enforcement Unit Chief; Scott Ferguson, Division Manager; Nick Knight, Office of Enforcement; and Doug Cushman, who will be involved in the future of Meeks Bay Resort for projects that occur in the Meeks Creek area.

Ms. Kemper made opening remarks. She stated this agreement represents a strong public commitment to do what is best for Lake Tahoe, wildlife, wetlands and future generations of Lake Tahoe.

Cathe Pool, Senior WRCE presented for the Prosecution Team.

Board comments:

- Member Cox had a question on Bates Stamp 3-108, Item No. 2 related to the two inches of rain. Ms. Pool stated the Water Board requires that stormwater facilities be required to hold one inch of rain. The USFS design criteria requires two inches of rain for a 24-hour period which is more stringent and requires a larger volume in a stormwater basin.
- Member Dyas asked if future plans don't include a marina then what other recreational opportunities may happen. Ms. Pool said the Prosecution team is not prejudging what future recreation possibilities could be as a part of the future planning process.
- Member Sandel asked on Bates Stamp 3-109, point 9 about the federal decision-making process on whether or not there will be a marina. Ms. Pool said she understands if the USFS and the public want to keep the marina in as a use then it will go through the same ranking as other options. This was answered later by Mr. Marsolais.
- Vice-Chair Jardine asked for clarification on Bates Stamp 3-108 item 3, if the Prosecution Team recommended the wording be changed from "intends" to "agrees". Ms. Pool stated "yes" per her counsel for both parties.
- Member Horne stated concern about incorporating a National Environmental Policy Act (NEPA) process into a Cease and Desist Order but did not want that to take away from her excitement on the project. She asked if the permit has expired how they can be held accountable. Per Ms. Pool the permit had not expired in 2015 when they received the violation. Elizabeth Beryt, Water Board counsel, indicated the 2016 permit had language in it that allows for enforcement. Nick Knight, counsel for the Prosecution Team, stated it is accepted practice to continue the expired permit for purposes of enforcement for conduct that occurred during the permit period. He believes the important verbiage in the agreement is the Basin Plan language. Member Horne asked regarding stipulation number 4, who is responsible for submitting the inspection reports. Ms. Pool stated it is the USFS. Member Horne asked that language be added to stipulate that it is the USFS. Mr. Knight had no objection but would discuss amending that language with the USFS. Member Horne asked if in stipulation 4 if there was a typo "per number 4 above". Ms. Pool stated it should be "per number 3 above". Member Horne also stated in number 6 that it doesn't state who is responsible for submitting the first phase of the assessment. Member Horne asked if the USFS did not meet the deadlines what enforcement ability the Water Board would have. Mr. Knight added that the first step would likely be a Time Schedule Order and perhaps there could be other enforcement mechanisms added. In the future that could be a complicated question specifically regarding the Tucker Act and decisional law that describes further immunities that the federal government would have. Member Horne asked Mr. Knight the advantage of a settlement agreement over a Cease and Desist Order. Mr. Knight stated the authority is precisely the same as a Cease and Desist Order. From a practical perspective, this allowed the enforcement team to work in a collaborative manner with the USFS that increases the likelihood of achieving the lofty goals. Member Horne asked where in the agreement it is required that the marina will remain closed until a permanent stormwater management plan is implemented. Mr. Knight stated at this point there is no permit going forward. The USFS amended the special use permit they have with the Washoe Tribe to exclude the use of the marina. Member Horne asked that wherever the word "intends" appears that it be replaced with "agrees". Mr. Knight stated that the earlier statement of his agreement above applied to the one location only in the agreement. He would discuss with Mr. Marsolais and his counsel.

- Chair Pumphrey stated he had a level of discomfort due to the nature of the relationship between the parties is such that the tools the Water Board is accustomed to using in an order are not available with this particular discharger. Mr. Knight stated it is his contention that due to the relationship of dual sovereignty there are some things the Water Board cannot order. Ms. Beryt stated the Water Board does have the authority to regulate the USFS under a Cease and Desist order. Chair Pumphrey asked for some guidance on what the Water Board can define or can't define in terms of the outcomes the Board wished to achieve. Chair Pumphrey asked what deadlines are enforceable and in what manner can they can be enforced. Mr. Knight stated that the dates in the Agreement need to be met. If not met, the first action would be a Time Schedule Order. The next step would be asking for some penalties based on the failure to comply with the Time Schedule Order. When dealing with the federal government the tools are more limited. Ms. Beryt stated the Water Board could adopt monetary assessments to compel action.

Mr. Marsolais presented for the USFS.

Board comments:

- Member Horne asked how much control Mr. Marsolais had over the process. Mr. Marsolais stated as long as the USFS is following NEPA it is fairly predictable and believes the agreement is a good one.
- Chair Pumphrey asked Mr. Marsolais if he would be willing to talk to his counsel on three housekeeping items: 1) to substitute the word "intends" with agrees, 2) the inclusion of the idea that this is a cease and desist order as well as an agreement, and 3) some minimum outcome in the event that the outcome that was hoped became unobtainable. Mr. Marsolais agreed he could commit to talking to counsel about all three items.

Mr. Neil Mortimer, Chairman, supported the staff recommendation (the agreement) and presented for the Washoe Tribal Council.

Board comments:

- Vice-Chair Jardine asked if there would be a problem about taking items back to the Tribal Council. Mr. Mortimer said there would be no problem doing so.
- Member Horne asked about the history of the rights extended to the Washoe Tribe.

Ms. Kemper added more information regarding the Board's authority over the USFS stating that at this time there is no evidence to pursue a Cease and Desist Order because they have implemented an interim project that is currently functioning.

Ms. Beryt, Board Counsel asked Prosecution Team a question on language in stipulation number 5 and stipulation number 7 about the Water Board providing acceptance of documents prior to the public comment period which is not permitted. Ms. Kemper clarified that what the USFS was looking for an agreement on the project description from the Water Board and Tahoe Regional Planning Authority. Ms. Beryt recommended the language be altered or removed.

Doug Smith, Supervising Engineering Geologist, on the Water Board Advisory Team, asked a question on stipulation number 3, if there is a written agreement explaining what the roles are between the USFS and Washoe Tribe for inspections and reporting. Mr. Marsolais stated when the use of the marina was removed the USFS took responsibility for inspections.

Board comments:

- Member Horne asked if the Parties would be agreeable to add language to have the USFS submit an inspection and water monitoring plan for approval regarding

Best Management Practice (BMPs). She believed the proposed agreement lacks detailed monitoring and reporting requirements.

- Member Sandel asked Ms. Kemper if it was possible to have agreement on the language at the next meeting in July. Ms. Kemper couldn't commit for the USFS and their counsel but suggested that the Executive Officer be given the authority to sign. Ms. Beryt clarified that the stipulated order could not be signed by the Executive Officer and needs to be voted on by the Water Board.
- Chair Pumphrey stated one of the options would be to send the stipulated agreement back to the Parties.

Chair Pumphrey declared the hearing closed.

The Board recessed from 9:00-9:12 p.m.

Chair Pumphrey asked for recommendations from the Advisory Team. Mr. Smith stated that temporary BMPs don't require rigorous monitoring. He recommended that the temporary BMPs be made longer lasting because there is no guarantee that this project will take place. He believes a missing piece is a plan on how they are installed, how they are maintained, what the adaptive management process is, and which areas need vegetation. Also the drainage plans should have topographic contours which could be easily addressed.

Board comments:

- Member Cox stated Mr. Smith's concerns are reasonable.
- Member Dyas also agreed that the BMPs should have more longevity.
- Member Sandel asked if the existing temporary BMPs could be examined and kept up every six months. Mr. Smith said there should be a narrative on the inspection and maintenance program.
- Member Horne asked if the language was added regarding Mr. Smith's missing pieces would that be enough or is he suggesting that the BMPs be permanent. Mr. Smith stated he is not suggesting that permanent BMPs be installed. He would like more detail and information on the temporary BMPs for longevity.

Motion: Moved by Member Sandel, seconded by Vice-Chair Jardine, to accept the Agreement as is, come back with enhancements at a later time. After discussion, Member Sandel withdrew his motion.

Motion: Moved by Member Horne, seconded by Member Sandel, directing the Advisory Team to modify the agreement with language changes discussed, present the edited agreement to the Parties and continue this item to the July Board Meeting. The Chair called for a Roll Call Vote and the motion carried per the following votes:

The motion *carried* per for the following votes:

Member Cox	aye
Member Dyas	aye
Member Horne	aye
Member Sandel	aye
Chair Pumphrey	aye
Vice-Chair Jardine	aye

4. Closed Session*

The Board, without the public present, went into closed session at 10:04 p.m. for Agenda Item 4.e. Discussion of Litigation re: Molycorp Inc., et. al., Debtors, Chapter 11, Case No. 15-11357 (CSS), United States Bankruptcy Court, District of Delaware. The meeting resumed with the public at 10:23 p.m.

Adjournment at 10:26 p.m.**REGULAR MEETING: Thursday, May 11, 2017 at 8:30 a.m.****Call to Order and Introductions**

Chair Pumphrey called the meeting to order at 8:30 a.m. on May 11, 2017, and introduced members of the Water Board.

Ms. Kouyoumdjian, Executive Officer, introduced Legal Counsel and Water Board Staff.

5. Public Forum

- Sarah Green, Executive Director of the Alpine County Watershed Group thanked the Water Board for the approval of their project, the Hope Valley Aquatic Habitat and their meadow restoration project. She is hopeful that the contracting process will be complete in a few months. Water Board staff, especially Eric Taxer and Lauri Kemper, have been very helpful.

6. California Department of Fish and Wildlife; Mojave River Fish Hatchery, renewal of a National Pollution Discharge Elimination System (NPDES) Permit for Mojave River Fish Hatchery.

Eric Taxer, WRCE, presented and recommended changes to the permit:

- Delete the first full paragraph on Bates Stamp page 6-060;
- Four typos to correct.

Member Horne moved to adopt the Order with the late corrections, seconded by Member Cox. The Chair called for a Roll Call Vote and the motion carried per the following votes:

The motion *carried* per for the following votes:

Member Cox	aye
Member Dyas	aye
Member Horne	aye
Member Sandel	aye
Chair Pumphrey	aye
Vice-Chair Jardine	aye

Public comment:

- Mr. Terry Jackson, the statewide NPDES coordinator for California Department of Fish and Wildlife for all 23 state facilities, acknowledged the effort of all involved on the much improved permit, specifically Ms. Pool and Mr. Taxer.

7. Development of a Nonpoint Source Permit for Federal Lands – Laurie Scribe
presented the status developing a permit to address nonpoint source pollution on federal lands managed by the USFS and Bureau of Land Management (BLM) and introduced audience members present related to the development of the permit.**Board comments:**

- Member Dyas asked if Ms. Scribe envisioned one single Environmental Impact Report (EIR) or one for each programmatic project. Ms. Scribe stated there will be one EIR for the permit to cover the scope of the entire permit and hoping this will be a joint EIR with the Central Valley Water Board.
- Chair Pumphrey asked if there would be separate permits for both federal agencies. Ms. Scribe stated that the one permit for the Water Region would include both federal entities – BLM land and Forestry land.

- Member Sandel asked if the USFS had adequate staff. Ms. Scribe stated that the BLM has significantly less resources than the USFS but thus far is working pretty well.
- Member Horne stated she is not convinced that every activity is appropriate for a programmatic approach in some cases because she is not aware of the related water quality problems. Member Horne asked does the Water Quality Management Plan (WQMP) differ from a Time Schedule Order. Doug Cushman answered they are very similar although the Time Schedule Order provides more pathways for forcing compliance and more punitive action. The WQMP does not preclude creating a Time Schedule Order approach.
- Chair Pumphrey noticed that Facility Management including campgrounds was excluded. Ms. Scribe stated they can consider moving it off of the not covered category.

Gabriel Venegas, the regional hydrologist for the USFS Region 5 introduced himself to the Water Board and gave an overview of his responsibilities.

Board comments:

- Member Horne asked Mr. Venegas how he envisioned linking the programmatic permit to the permit on the allotments. Mr. Venegas stated he is not the range program management lead but the data being collected by the range program would be valuable in at least assessing water quality.

Note: The Water Board took a break from 9:58 a.m. - 10:16 a.m.

- 8. Climate Change Staff Report** – Scott Ferguson, Supervising WRCE, presented findings from the 2016 Climate Change Survey, summarized 2015-2016 Water Board workshops to solicit stakeholder input, and discussed climate change actions required by existing laws, policies, or Water Board actions underway.

Board comments:

- Member Sandel was relieved to see the 400 points narrowed to 10 but is puzzled what the practical result will be when combined with what was recently received from the State Board.
- Member Horne asked how much Lahontan staff can address as part of the normal course of doing business. She is looking forward to the results of the workshop before setting priorities.
- Member Cox asked where the 26 main concepts were described. Mr. Ferguson stated they are available on the Climate Change Survey results on the website. These were condensed down to the current 10 on Table 4, Bates Stamp 8-23. Staff should focus as much as possible on activities that Water Board staff is already undertaking.
- Member Dyas believes a very good and practical schedule was laid out.
- Chair Pumphrey encouraged other members of the Board to get involved in the workshops either by location or topic area.

9. Status Report – Local Agency Management Plan (LAMP) Supplemental Information

Mike Coony, WRCE, presented supplemental information regarding the process and criteria to consider approval of LAMPs in accordance with State Board's Onsite Wastewater Treatment System Policy. Lauri Kemper, Assistant Executive Officer, gave an overview of the process that the Region has been involved in with agencies whose LAMP

applications will appear before the Board in July and what was learned from Riverside and Kern County plans.

Board comments:

- Member Sandel is concerned that the County staff must feel overwhelmed by the amount of work this program is putting on their plate. This is a revolutionary change in professional oversight versus installing and forgetting about it. Mr. Coony stated it is time for the counties to start the process to do performance regulation, not just prescriptive regulation.
- Vice-Chair Jardine looks forward to hearing the input from the communities.
- Member Horne stated in comparing the Riverside County approach versus the Kern County approach, she prefers the Kern County approach. She believes all the suggestions are good ideas.
- Member Cox asked about the timeline going forward. Mr. Coony stated the local agencies have submitted their plan. San Bernardino LAMP was received in November 2015; most others were received at the end of 2016. Member Cox asked at what point do the LAMPs have to be submitted to the Board. Mr. Coony stated they must be approved by May 13, 2018 to avoid going to Tier 1. Member Cox asked who is going to pay for the monitoring wells. Perhaps a data point may already exist and is there consideration to use these data points when they exist. Mr. Coony stated the approach has been to use existing wells and installation of new monitoring wells is not under consideration at this time. On slide number 14. Member Cox did not agree to the three bullet points included. Member Cox did not want the options on slide number 15 either. Member Cox asked if monitoring wells is only where water problems have been identified. Mr. Coony stated they have identified existing populated areas that have been there for a while. It is the cumulative effect of the existing onsite systems.
- Member Dyas asked re: slide number 10, the fourth bullet, he agreed very strongly. This is inconsistent with slide number 14. He asked Mr. Cooney how both can be done and if he thought the Board could dictate the lot size today. Ms. Beryt stated this is not for action today. Member Dyas agrees with the Kern County approach.
- Chair Pumphrey stated that the comment letters included made it easier for him to understand the issues.

Public Comment

- Mike Podgraez representing the Cities of Apple Valley, Adelanto, and Hesperia addressed the Board.
- Tina Souza, representing the City of Hesperia addressed the Board.

Board Comments:

- Member Sandel asked for an explanation of what the various Tier definitions meant. He asked for confirmation that Tier 2 local agencies must develop funding if they don't have it. Mr. Coony confirmed that it is a Tier 2 requirement.

9. Reports by Water Board Chair and Board Members

- Member Horne – At the request of the North Coast Regional Board, she and Mr. Robert Larsen presented on the Lake Tahoe Storm Management Water Permits.
- Chair Pumphrey – the last Chair's call was devoted to talking about WQCC October 24 and 25. Region 6 may be asked to present on Climate Change.

10. Executive Officer's Report

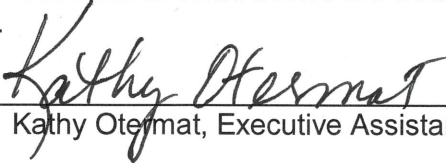
Ms. Kouyoumdjian, Executive Officer, presented the [May Written Report](#) and gave additional updates on:

- Recent new hires and promotions.
- Los Angeles Department of District Water and Power 404 permit.
- Leviathan Mine update.
- New rules establishing beneficial use definitions to protect Native American cultural and subsistence fishing wildlife, and non-tribal subsistence fishing and mercury limits for water bodies.
- Recent Chrome 6 MCL Sacramento Superior Court ruling against the State Water Board.

ADJOURNMENT

With no further business to come before the Board, the meeting adjourned at 12:27 p.m. on May 11, 2017.

Prepared by:


Kathy Otermat, Executive Assistant

Adopted:

