

# Lahontan Water Board 2022 Triennial Review

## Response to Comments

| Letter                                  | Label | Summary Comment  | Response  |
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| Mammoth Community Water District (MCWD) | MCWD1 | <p>I. MCWD requests the project priority be raised from low to high (for “Add Laurel Pond as a named waterbody and evaluate BUs)</p> <p>The existing Waste Discharge Requirements (WDRs) for Laurel Pond were issued on March 14, 1991. The regulatory framework at the time considered wastewater effluent discharges to Laurel Pond “land disposal of sewage effluent” and Laurel Pond was considered a “restricted recreational impoundment.” MCWD understands that the 1991 WDRs are outdated, and under the existing Water Quality Control Plan (Basin Plan) Laurel Pond would be categorized as a “water of the state” because it was an ephemeral water body prior to discharges commencing. As a “minor surface water”, beneficial uses are generically assigned to Laurel Pond and do not actually reflect the current or</p> | <p>This project is one of many competing priorities for our limited Basin Planning Resources. The Lahontan Water Board's proposed rankings for these projects in the Triennial Review were developed using the rationale and ranking factors provided in the Staff Report. The application of these ranking factors resulted in a low ranking for this project in the current Triennial Review.</p> <p>As indicated in State Board WQO 2002-0015, “In California, the discharge of waste to state waters is a privilege, not a right. Dischargers who choose to dispose of their effluent in state waters have a responsibility to the waterbody that they are using for waste disposal. Waste disposal, although a reality, is not a recognized beneficial use of water. Hence, a discharger who contends that specific uses are not appropriate for a water used for waste disposal has an obligation to support that assertion with the necessary studies and investigations.”</p> |

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|  |  | <p>planned public uses of the pond, or what wildlife do or could inhabit the pond. MCWD agrees updated WDRs are appropriate for Laurel Pond, but requests that the applicable beneficial uses be defined to reflect the actual existing and potential uses of the water body – not generically assumed beneficial uses. For example, MCWD is monitoring four new groundwater monitoring wells that were constructed in the summer of 2021, and is working with Lahontan staff on a comprehensive study of Laurel Pond and the down-gradient groundwater to determine if Groundwater Recharge is an appropriate beneficial use that needs protection. This is being done in preparation for a future updated WDR. To assist with this effort, MCWD is willing to work with Lahontan staff and is willing to provide resources to conduct the necessary studies in support of a Basin Plan Amendment.</p> <p>MCWD requests this proposed Basin Plan Amendment be assigned high priority so that it can be completed concurrently with the drafting of new WDRs for Laurel Pond. If new WDRs are issued prior to a Basin Plan Amendment, they would likely require financially burdensome wastewater treatment plant</p> | <p>The information sought by the comprehensive groundwater study that is referenced in the comment seeks to understand the potential pathways and impacts of water infiltrated from Laurel Pond. The study is currently under development will provide information that Water Board staff can use to inform development of any new or updated permit for MCWD. Proceeding with a permit update or applying resources to evaluate the Basin Plan status of Laurel Pond (which could affect permit conditions) before learning of this information seems premature to staff.</p> <p>Thank you for indicating a willingness to work with Lahontan staff and to provide resources for any necessary studies. The ranking for this potential project can be re-evaluated in future triennial reviews at which point the studies discussed by the commenter and other data and information may be available. In the meantime, Water Board staff is committed to continuing work with the discharger to guide the studies which could be needed to inform potential board actions related to the development of new WDRs, and/or the modifications to the water quality standards for Laurel Pond.</p> |
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|                                  |        | upgrades that would not be necessary to maintain the existing or potential beneficial uses at Laurel Pond.   |  |
| MCWD                             | MCWD 2 | <p>II. MCWD requests that COLD beneficial uses also be studied for Laurel Pond, in addition to evaluating whether REC-1 and MUN beneficial uses are appropriate.</p> <p>MCWD would also like to evaluate the applicability of COLD beneficial uses at Laurel Pond. This would involve a study to evaluate physical conditions related to the natural features of the water body (i.e. substrate, cover, flow, depth, pools, riffles, etc.) and water quality (i.e. nutrients, oxygen, pH, temperature, etc.). This study would inform the aquatic habitat potential of Laurel Pond and possibly show that only site-specific objectives are needed for ammonia toxicity like the objectives for lower Amargosa Creek and the Piute Ponds and wetlands.</p> | See Summary Response # MCWD1.  |
| Southern California Edison (SCE) | SCE1   | <p>Comment #1: Greater alignment of receiving water WQOs with project-specific beneficial water uses</p> <p>SCE owns and operates hydroelectric generation facilities within the Lahontan Basin. Hydroelectric power generation and the associated recreational uses in/around hydro facility</p>  | WQOs for better alignment with beneficial uses could be beneficial to multiple Water Board programs, and this issue was considered in the Triennial Review. This issue is part of a long-term approach to updating the Basin Plan, as indicated in the notes for the Evaluate WQOs for Association with Specific Beneficial Uses issue summary in the 2022 Triennial |

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|  |  | <p>impoundments are considered beneficial water uses. SCE's hydroelectric facilities require periodic repairs and routine maintenance, which often necessitate diversion and dewatering of work areas. Baseline water quality conditions in these pristine, high-elevation locations can be at or higher than the Lahontan Basin Plan Water Quality Objectives (WQOs), making compliance with the Basin Plan in certain locations such as Bishop Creek, highly challenging.</p> <p>SCE requests that the Water Board incorporate a process to tailor the Basin Plan thresholds to project or site-specific beneficial uses and associated downstream receiving waters. In the case of these remote hydroelectric facility projects, the driving factor may be maintaining a water quality standard necessary to support aquatic life and habitat (vs a drinking water standard). Anecdotally, baseline samples at SCE's Bishop Creek facilities are historically in the range of 1 NTU or less. Current allowable deviation for sediment would result in an exceedance of less than 1-2 NTU maximum, effectively not providing for any additional sediment load.</p> | <p>Review List document available on the basin planning program webpage. The Lahontan Water Board's proposed rankings for Triennial Review basin planning issues were developed using the rationale and prioritization factors provided in the 2022 Triennial Review Staff Report. The application of these ranking factors resulted in a low ranking for this issue being recommended for the Low Priority category in the current Triennial Review.</p> <p>The Water Board may undertake basin planning efforts to develop site-specific water quality objectives to protect beneficial uses, particularly where staff determines the existing water quality objective is not suitable or appropriate for the waterbody condition. Such efforts are customarily identified, catalogued, and prioritized for staff resources through the Triennial Review process. The process to develop site specific water quality objectives follows US EPA guidelines and can be a resource intensive process, including technical work and the basin planning process.</p> <p>Similarly, if the commenter contends that a beneficial use is not appropriate for a particular waterbody or section of a waterbody, the Water Board asks that the commenter specify the waterbody location, the beneficial use in question, and provide studies or analysis to justify the assertion. The Water Board can use this information</p> |
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|     |      |   | <p>to prioritize the project in the next Triennial Review process, and if necessary, to conduct a Use Attainability Analysis to determine if a beneficial use should be de-designated. Note that the Sources of Drinking Water Policy (Resolution No. 88-63) directs the Water Board to designate all surface waterbodies and groundwater basins with the MUN beneficial use unless one of several specific exceptions is met.</p> <p>Whether to allow a lowering of water quality due to permitted maintenance or construction activities would be addressed through the conditions of a Clean Water Act Section 401 Certification, and if applicable, through a Regional Board prohibition exemption determination.</p> <p>Additionally, any new or modified Beneficial Uses and water quality objectives would be adopted by the Lahontan Water Board in consideration of all legal and regulatory requirements and considerations, including protection of all designated and existing beneficial uses.</p> |
| SCE | SCE2 | <p>Comment #2: Adopt mechanism for project-specific variance when baseline WQ is at or exceeds Plan WQOs</p> <p>For projects in locations where baseline WQ conditions are very close to or greater than defined WQOs, SCE requests the</p> | <p>Whether to allow a lowering of water quality due to permitted maintenance or construction activities would be addressed through the conditions of a Clean Water Act Section 401 Certification, and if applicable, through a Regional Board prohibition exemption determination.</p>  |

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|     |      | <p>Regional Board consider the addition of flexibility (e.g., a variance procedure) in how a proponent demonstrates Plan compliance.</p>   | <p>In addition, State Board Resolution No. 2018 – 0053 included the adoption of a Variance Policy for the Water Boards. The Variance Policy is consistent with federal regulations which provides a regulatory framework for the adoption of a water quality standards variance (40 C.F.R. § 131.14). Adopted variances to water quality standards have up to a five-year expiration timeline.</p>   |
| SCE | SCE3 | <p>Comment #3: Adopt mechanism for allowance of release and timing of impounded waters when operations and maintenance activities cannot be delayed</p> <p>SCE is required to perform operational or maintenance activities for safety of our dams and supporting infrastructure, which may require the release of impounded waters or creating a dry workspace. SCE accounts for environmental conditions (e.g., drought) and evaluates other methods (e.g., divers, etc.) first to minimize the need for the release of impounded waters. However, cases do arise where the release of impounded waters will be necessary to operate and maintain the dams and supporting infrastructure. SCE requests additional flexibility be built into the Basin Plan for the allowance of required operations or</p> | <p>The comment is directed to the Lahontan Water Board, so this response is focused on the Lahontan Water Board’s authority and the basin planning efforts, as prioritized through the Triennial Review process.</p> <p>There already exist mechanisms to facilitate operations and maintenance activities that anticipate water quality exceedances.</p> <p>The State Water Board division that focuses on FERC licensing and/ or water rights may also include conditions in any 401 Certifications for an SCE project. Such permits would require a Basin Plan prohibition exemption if water quality objective exceedances are anticipated.</p> <p>Operation and maintenance allowances can be included into 401 Certifications and permits as appropriate to accommodate emergency work as allowed under both the Clean Water Act and the Porter Cologne Water Quality Control Act.</p> |

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|     |      | <p>maintenance activities in these situations.</p>   | <p>Finally, the Evaluate WQOs for Association with Specific Beneficial Uses issue, summarized in the 2022 Triennial Review List document, may also include consideration of averaging periods and exceedance frequencies, and other provisions which could accommodate releases of impounded waters while maintaining protection of beneficial uses. Additionally, See responses to SCE comments 1 and 2, above.</p>   |
| SCE | SCE4 | <p>Comment #4: Riparian, Floodplain, and Wetland Protection Updates - refining the definition of “riparian areas”</p> <p>SCE preforms ongoing maintenance-related work on its facilities and infrastructure throughout its service territory and seeks permit authorization for projects with dredge and fill impacts to waters of the State. Inclusion of a riparian area to the defined waters of the State, which is often concurrent with US Army Corps of Engineers’ defined Ordinary High Water Mark, will potentially result in a significant expansion of Board jurisdiction and incur significant increases in permitting costs and resources. SCE would like to understand the Board’s definition and how/ where it will be applied. For example, will it be species dependent, or will it include any</p> | <p>The State Board Dredge and Fill Policy (Resolution No. 2019-0015), adopted on April 2, 2019, includes the following definition of Wetlands:</p> <p style="padding-left: 40px;">An area is wetland if, under normal circumstances, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area’s vegetation is dominated by hydrophytes or the area lacks vegetation.</p> <p>Riparian areas are defined by vegetation species/assemblages and could include vegetation that grows alongside ephemeral washes in desert areas. The Water Board does not currently have criteria defined in an</p> |

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|  |  | <p>vegetation that grows alongside a stream channel, such as ephemeral streams within desert areas</p> | <p>adopted policy, and species that are hydrophytic at one elevation may grow in upland areas at higher elevations. Staff make determinations based on site-specific factors and often collaborate with California Department of Fish and Wildlife on such determinations.</p> <p>The defining riparian areas may be included as one aspect of an evaluation and basin planning effort associated with the Riparian, Floodplain, and Wetland Protection Updates issue summarized in the Lahontan Water Board 2022 Triennial Review List document available on the basin planning program webpage. A process to define “riparian areas” would be determined through the public Basin Planning process in which the commenter may participate. Alternatively, the State Water Board may address this issue through its planning processes so that the definition is consistent throughout California. The process to amend the Basin Plan with any outcome stemming from prioritization of the Riparian, Floodplain, and Wetland Protection Updates issue would include an assessment of environmental impacts and associated costs for potential changes to the Basin Plan.</p> |
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