

# **Water Board Responses to California Public Comments**

November 2, 2010

5. Feldmen, Shaw, & McLaughlin, LLC

# FELDMAN, SHAW & McLAUGHLIN, LLP

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September 10, 2010

California Regional Water Quality Control  
Board, Lahontan Region  
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2501 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

Via Email - DFSmith@waterboards.ca.gov  
and US Mail

Nevada Division of Environmental Protection  
Attn: Jason Kuchnicki  
901 South Stewart Street, Suite 4001  
Carson City, NV 89701-5429

Via Email – jkuchnic@ndep.nv.gov  
and US mail

Re: Final Lake Tahoe Total Maximum Daily Load Report  
Draft: June 2010

Gentlemen:

Thank you for the opportunity to comment on the Final Lake Tahoe Total Maximum Daily Load Report referenced above (TMDL Report).

Based on review of the Report and conversations with Lahontan staff, we understand it is not the Regulatory Agency's intent to restrict private development or redevelopment within a local jurisdiction in the event the local jurisdiction does not meet annual Lake Clarity Credit targets, although a particular project may not be eligible for its allocation of development resources under the anticipated TRPA Regional Plan Update in the event a local jurisdiction is non-compliant. In other words, a project that properly treats its stormwater is not held hostage to a local jurisdiction that has not met either its Lake Clarity Credit target or NPDES permit requirements. Please confirm the foregoing.

Under current standards, individual projects are required to satisfy the 20-year one hour storm design standard. We understand the current standard does not address fine sediment particle capture and the adoption of the TMDL will impose new design standards for future projects and redevelopment projects. What is the proposed design standard?

In Chapter 11, Section 11.3.1, at page 11-8, it is noted "... the Water Board and NDEP will monitor load reduction progress by reviewing annual stormwater program reports and, if necessary, will take enforcement action against any jurisdiction that fails to meet established Lake Clarity Credit requirements." Please confirm that "enforcement action" would not prohibit.

## Comment

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## Response

**FSM-1:** The proposed Basin Plan amendment (BPA) specifies water-quality based performance requirements (load reductions) and does not regulate land use. Wasteload allocations (load reduction requirements) in the TMDL apply to the urban jurisdictions and not to individual projects. Text has been added to the proposed BPA, page 11 paragraph 2, and in the Basin Plan page 5.6-1, to address new development and re-development projects. Specifically, projects can choose to either infiltrate runoff from a 20-year 1-hour storm, or meet the numeric effluent limits for stormwater, or work with local municipality to demonstrate that stormwater facilities for the project comply with or meet a municipality's overall load reduction strategy. Also see the last portion of response FSM-2 below related to catchment-scale land disturbing activities.

**FSM-2:** The proposed BPA has been revised to state stormwater treatment requirements for new development, redevelopment, and private property best management practices. Page 31 of the proposed BPA has the added text which states:

*In the event that site conditions do not provide opportunities to infiltrate the runoff volume generated by a 20 year, 1-hour storm, project proponents must either (1) meet the numeric effluent limits in Table 5.6-1, or (2) document coordination with the local municipality or state highway department to demonstrate that shared stormwater treatment facilities treating private property discharges and public right-of-way stormwater are sufficient to meet the municipality's average annual fine sediment and nutrient load reduction requirements.*

A municipality must annually demonstrate on a catchment (i.e. sub-watershed) basis that no increased loading in fine sediment particle, total nitrogen, and total phosphorus will result from any land disturbing activity permitted in the catchment. Efforts to eliminate the increased loads from these land disturbing activities will not be counted towards the annual load reduction requirements.

**FSM-3:** The Lake Tahoe TMDL and associated documents do not prevent private property owners from developing or redeveloping their property, assuming such actions comply with Tahoe Regional Planning Agency and local government requirements. Depending on the nature of the violation, The Water Board may use a variety of enforcement remedies as specified in the California Water Code. It would not be appropriate at this time to speculate on the nature of future enforcement. However, any potential Water Board enforcement action take against local government is not expected to directly impact private property development rights.

Mr. Douglas F. Smith  
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private property owners from developing or redeveloping their property in a non-compliant local jurisdiction, provided their project properly treats its stormwater.

What is the effect of pine pollen on lake clarity? This annual deposit represents direct deposition to the Lake, as well as hydrologic transport. Is the capture of upland pine pollen a benefit to the Lake?

At Chapter 10, at Table 10-1, Fine Sediment Particle Load Allocations by Pollutant Source Category, at page 10-4, the Basin-Wide total load (Particle/Yr) is estimated at  $4.8E+20$ . A 32% reduction is forecast to meet the clarity challenge, however, we understand loads attributable to particular water sheds have not yet been determined. Please explain how a local jurisdiction can be required to reduce its loading by 32% when its actual load is unknown. Moreover, if the subsequent determination of each jurisdiction's load is significantly less than the loading forecast in Table 10-1, is it anticipated the load reduction target (clarity credits) will be adjusted?

Again, we appreciate the opportunity to review and comment on the TMDL Report and look forward to your response to the foregoing.

Sincerely

FELDMAN, SHAW & McLAUGHLIN, LLP

By:

Lewis S. Feldman

LSF/jps

## Comment

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Lewis S. Feldman

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## Response

**FSM-4:** Pine pollen is not believed to be a significant factor in transparency loss, and pine pollen is not considered to be a controllable source of particles reaching the lake.

Lake Tahoe's transparency is impacted by both organic and inorganic particles. Inorganic sediment particles less than 16 micrometers effectively refract light and are the primary driver of the transparency condition. Pine pollen is an organic particle. Although pine pollen is annually deposited on the lake and watershed surfaces, pollen does not refract light and does not support algal growth in the lake itself.

**FSM-5:** The urban uplands section of the Lake Tahoe TMDL Implementation Plan describes the process by which municipal jurisdictions will be required to estimate jurisdiction-specific baseline loads. The percentage load reduction requirements are then applied to each jurisdiction's baseline load.

**FSM-6:** The TMDL does not include estimates of each jurisdiction's baseline load. Rather, the TMDL proposes load reduction requirements which are stated as a percent reduction from each jurisdiction's load as of 2004, so there is no need to adjust the load reduction percentages.